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No. 699

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

AGAINST

SING KEE,

Defendant-Appellant.

APPELLANT'S APPENDIX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WOrth 2-0689.

INDEX

	Page
Docket Entries	1a
Indictment	5a
Judgment and Commitment	12a
Excerpts from Testimony	14a
Charge of the Court	38a
Discussion	81a
Verdict	81a
Motion to Set Aside Verdict	82a

EXCERPTS FROM TESTIMONY

Witnesses for Defendant

Samuel B. Waterman:

Cross 14a

Sing Kee:

Cross 23a

Docket Entries

Crim. No. C 15038

THE UNITED STATES

vs.

SISO KEE

VIOLATION

Title 18, Sec. 371, 2/1542 and 3238 USC.

Conspiracy to induce aliens to enter the U. S. illegally and make false statements in applications for passports; and making false statements in application for passports.

Five counts.

Date	*Proceedings*
5- 3-56	Filed indictment.
5- 3-56	Warrant of arrest ordered. Warrant issued. Noonan, J.
5- 4-56	Defendant appears in court with his attorney. Warrant vacated. Pleads not guilty. Bail fixed at $5000. Paroled until 4 PM to give bail. Deft. ordered fingerprinted. Deft. allowed 30 days to file motions. Noonan, J.
5- 4-56	Filed notice of appearance by Curran, Mahoney, Cohn & Stim, 29 Bway, NYC as atty for deft.
5- 4-56	Filed affdt and order extending bail limits of deft. Levet, J.

Docket Entries

Date	*Proceedings*
5- 8-56	Filed warrant for arrest (Warrant Vacated) Noonan J
5-21-56	Filed affdt. and notice of motion for bill of particulars.
5-21-56	Filed notice of motion for an order dismissing count 2 and 3 of indictment.
6-25-56	Filed affdt. in opposition to motions.
6-22-56	Memo endorsed on motion papers to dismiss counts 2 & 3. Motion is denied. So ordered. McGohey, J.
6-22-56	Memo endorsed on motion papers for bill of particulars. Motion for bill of particulars on items 1 to 15 inc. granted. The motion for discovery and inspection of the dossiers of the applications for passports is denied. McGohey, J.
6-29-56	Filed order that defendants motion for bill of particulars be granted etc., and that defendants motion for the discovery and inspection of the applications for passports is denied. McGohey, J.
7- 3-56	Filed affdt. and notice of motion for an order permitting defendant to inspect and copy certain records, pursuant to Rule 17(c).
7-11-56	Motion withdrawn in open court by Attorney Menahem Stim. Murphy, J.
7-12-56	Filed bill of particulars.
10-10-56	Filed Transcript of record of proceedings, dated 5-4-56.

Docket Entries

Date	*Proceedings*
11-19-56	Filed Bond in the sum of $5,000. Public Service Mutual Insurance Co. (Surety).
2- 4-57	Trial begun before Judge Levet and jury.
2- 5-57	Trial cont'd.
2- 6-57	Trial cont'd.
2- 7-57	Trial cont'd.
2- 8-57	Trial cont'd.
2-11-57	Trial cont'd.
2-13-57	Trial cont'd.—Government rests. Counsel for deft. moves to strike testimony and to dismiss the indictment. Decision reserved as to counts 1 and 5. Denied as to counts 2-3 and 4. Motions to strike testimony—denied. Levet, J.
2-14-57	Trial cont'd.—The court denies motions to dismiss count 1. Count 5. is dismissed on defense counsel's motion. Levet, J.
2-15-57	Trial cont'd. Defendant rests. Government rests. Counsel for deft. renews motions to dismiss.—Motions denied. Levet, J.
2-18-57	Trial cont'd. and concluded. Jury retires to deliberate. Jury returns verdict of "Guilty" on counts 1-2-3 and 4. Bail of $5,000 continued. Sentence set for 3-5-57 at 10 A. M. Pre-Sentence report ordered. Levet, J.
3- 5-57	Filed Judgment—#61,478 Sentence—Two and one-half years on each of counts 1-2-3 and 4. to run concurrently with each other at a place

Docket Entries

Date	*Proceedings*
	of confinement to be designated by the Atty. Genl. of the U. S. Fined $1,500 on each of counts 1 2 3 and 4. Total fines amounting to $6,000 are to be paid, or he stands to be committed until otherwise discharged according to law. Bail set at $10,000 pending appeal. Levet, J.
3-5-57	Issued commitment and copies.
3-6-57	Filed bond pending appeal dated 3-6-57 in the sum of $10,000. Continental Casualty Company. (Surety)
3-6-57	Filed notice of appeal.
3-11-57	Filed order dated 3-8-57 extending the bail limits of Sing Kee. Consented to by U. S. Atty. and Surety. Murphy, J.
4-12-57	Filed stipulation extending the time to docket the record on appeal to 4-17-57. So ordered. 4-12-57. Levet, J.
4-16-57	Filed Transcript of record of proceedings, dated Feb. 4, 5, 6, 7, 8, 11, 13, 14, 15, 18, 1957 and March 5, 1957.
4-17-57	Filed stipulation designating filed papers to be included in record on appeal.
4-17-57	Filed notice that the record on appeal has been certified to the US CA on 4-17-57.
4-26-57	Filed recognizance dated 4-26-57 in the sum of $6,000. guaranteeing the payment of fine imposed. Continental Casualty Company. (Surety)

Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

UNITED STATES OF AMERICA

v

SING KEE

—o—

The Grand Jury charges:

1. Beginning in and about 1949 and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, Sing Kee, the defendant herein, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree with Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Wing Gim (also known as Jew Ing Gim), Ng Yee Chor (also known as Ng Quock Keung), Ng Jock Neuy (also known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (also known as Sum Yuen Quay), and George Wong, named as co-conspirators but not defendants herein, and with divers other persons to the Grand Jurors unknown, to defraud the United States and to commit offenses against the United States, to wit, to violate Title 18, Sections 1425 and 1542 and Title 8, Section 1324 of the United States Code.

2. It was part of said conspiracy that the defendant and other co-conspirators would wilfully and knowingly encourage and induce the entry into the United States of

aliens not lawfully entitled to enter or reside under the laws relating to the immigration of aliens.

3. It was further part of said conspiracy that the defendant and other co-conspirators would make false statements and cause false statements to be made in applications for passports in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai, with intent to induce and secure the issuance of passports under the authority of the United States for the use of others, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22 Code of Federal Regulations).

4. It was further part of said conspiracy that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of said applications in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai.

5. It was further part of said conspiracy that the defendant and other co-conspirators would submit and file, and cause to be submitted and filed, the aforesaid applications with the Consul of the United States of America in and for the Consular District of Hong Kong in the British Crown Colony of Hong Kong.

6. It was further part of said conspiracy that the defendant and the other co-conspirators would knowingly attempt to procure and obtain documentary evidence of citizenship for other persons not entitled thereto, by causing civil actions to be instituted and filed under Section 503

of the Nationality Act of 1940, in the names of Jew Sun Ai, Moy Hing Mee, Chin Nin Gon and Chin Sen Toon, to have them declared citizens of the United States.

OVERT ACTS

The Grand Jury further charges that in furtherance of the said conspiracy and to effect the objects thereof the defendant and other co-conspirators performed the following overt acts:

1. In or about 1949, in the Southern District of New York, the defendant Sing Kee had a conversation with Hom Wing Gim at 11 Mott Street, New York, N. Y.

2. In or about December, 1949, in the Southern District of New York, the defendant Sing Kee was paid $400. by Eng Gim Ting at 11 Mott Street, New York, N. Y.

3. On or about December 21, 1949, in the Southern District of New York, the defendant Sing Kee handed Hom Wing Gim an unsigned affidavit at 11 Mott Street, New York, N. Y.

4. In or about March, 1950, in the Southern District of New York, the defendant Sing Kee had a conversation with Ng Mong On at 11 Mott Street, New York, N. Y.

5. On or about the 24th day of March, 1950, in the Southern District of New York, the defendant Sing Kee handed Ng Mong On an unsigned affidavit at 11 Mott Street, New York, N. Y.

6. In or about April, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Chin Kung Chee at 11 Mott Street, New York, N. Y.

7. On or about the 5th day of May, 1952, in the Southern District of New York, the defendant Sing Kee handed Chin Kung Chee an unsigned affidavit at 11 Mott Street, New York, N. Y.

8. In or about September, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Moy Mun Sing at 11 Mott Street, New York, N. Y.

9. On or about the 6th day of October, 1952, in the Southern District of New York, the defendant Sing Kee handed Moy Mun Sing an unsigned affidavit at 11 Mott Street, New York, N. Y.

10. In or about December, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with George Wong at 11 Mott Street, New York, N. Y. (Title 18, Section 371, United States Code.)

COUNT TWO

The Grand Jury further charges:

On or about January 18, 1951, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Ng Quock Keung, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101

et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Ng Mong On, when in truth and in fact as the defendant then well knew, the passport applicant was not the son of Ng Mong On. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT THREE

The Grand Jury further charges:

On or about June 18, 1951, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Jew Sun Ai, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Jew Ing Gim, when in truth and in fact, as the defendant then well knew, the passport applicant was not the son of Jew Ing Gim. (Title 18, Sections 2, 1542 and 3238, United States Code.)

Indictment

COUNT FOUR

The Grand Jury further charges:

On or about October 28, 1952, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Moy Hing Mee, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Moy Man Sing, when in truth and in fact, as the defendant well knew, the passport applicant was not the son of Moy Man Sing. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT FIVE.

The Grand Jury further charges:

On or about December 10, 1952, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Sum Nin Oon, with intent to induce and secure the issuance of the passport under the authority of the United States for the use of

another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant and his father were members of the Sum family, when in truth and in fact, as the defendant then well knew, the passport applicant and his father were not members of the Sum family. (Title 18, Sections 2, 1542 and 3238, United States Code.)

.....
Foreman

PAUL W. WILLIAMS
United States Attorney

Judgment and Commitment

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

C 150-98

U. S. A.

v.

SING KEE

On this 5th day of March, 1957 came the attorney for the government and the defendant appeared in person and by counsel,

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to violate the Immigration Laws of the U. S.;

Wilfully and knowingly making false statements in applications for passports. (Title 18, Secs. 371, 2, 1542 and 3238 U. S. Code) as charged in counts 1, 2, 3, and 4 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown on appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

Judgment and Commitment

It is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two and One Half ($2\frac{1}{2}$) years and fined $1500. on each of counts 1, 2, 3, and 4. Prison sentences to run concurrently with each other. Defendant to stand committed until fines imposed on counts 1, 2, 3, and 4 totalling $6000. are paid or he is otherwise discharged according to law.

Bail set at $10,000 pending appeal.

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

RICHARD H. LEVET
United States District Judge

Excerpts From Testimony

(590)

New York, February 14, 1957.
10.30 o'clock a. m.

* * * * *

SAMUEL B. WATERMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Cross-Examination by Mr. Goettel:

* * * * *

(690) Q. I believe you testified on direct examination that you don't remember how you were paid in the Chin Way Mon case, is that correct? A. I don't recall right now how I was paid, no.

Q. Were you asked this question?

The Court: Excuse me, just a moment. Didn't you testify that you were paid directly by Chin Way Mon in that case?

The Witness: Yes, I did, but I am assuming he means whether by cash or check.

The Court: Well, make your question clear. You don't recall whether it was by cash or by check?

(691) The Witness: No, I don't.

The Court: As you said before.

Q. Were you asked this question and did you give this answer before the Grand Jury concerning the Chin Way Mon payment:

"Do you know how he paid you, whether by cash or check? A. He paid me by check."

A. What is the question?

Q. Did you give that answer? A. If that is the answer given there in the minutes, that is the answer I gave.

Q. Is that true? A. So far as I know, it was.

Q. You cannot remember now how you were paid? A. I have not had any occasion to check it recently.

Q. Could you have been paid by check signed by one George Wong? A. That name has no familiarity to me at all.

Q. How about Wong Doo Hing? A. No.

Q. How are you usually paid in these cases? (692) A. In these particular cases?

Q. 503 actions referred to you by Sing Kee. A. Some of the people paid me in dribs and drabs, some of them paid promptly.

Q. How do you receive money, though, directly or from Sing Kee? A. Most of the time Mr. Sing Kee collected the money for me.

Q. And he would forward it to you? A. That's correct.

Q. What would you do with it when you got it? A. I would use it.

Q. How would you use it? Where would you put it? A. I would put it in my checking account.

Q. Where is that? A. In the Trust Company of North America, on 115 Broadway.

Mr. Goettel: Will you repeat that answer, please?

(Last answer read)

Q. Did you keep any records concerning these payments to you? A. Yes, I kept some records.

Samuel B. Waterman—for Defendant—Cross

Q. What sort of books and records do you keep? (693) A. I have a check account and with each one of these cases in the case itself I keep a record.

The Court: Excuse me. Do you write the receipts down in check book stubs?

The Witness: Yes.

The Court: All of them, when they are paid?

The Witness: It wouldn't make any difference, whether cash or check. We put what it refers to down in the check book.

Q. Do you believe that your answers to the questions as to what bank you put these funds into and what sort of books and records you keep—do you believe your answers to those questions incriminate you?

Mr. Stim: Your Honor, I object to that.

The Court: Sustained.

Mr. Stim: That is a statement and I think it is very, very unfair to make that statement.

Mr. Goettel: Your Honor, may I approach the bench?

(The following discussion took place at the side bar out of the hearing of the jury.)

Mr. Goettel: He testified before the Grand Jury to the exact same questions stating that his answers (694) would incriminate him, and he claimed his privilege, Fifth Amendment, not to answer them. I want to bring that out.

Mr. Stim: Well, your Honor, may I say this. It is prejudicial and it is unfair and it is in violation of the rights of any witness to refer to any invocation

of his Fifth Amendment, and the Supreme Court has held if at any time a prosecutor asks a witness whether or not he invoked the Fifth Amendment in the presence of a jury, that would be reversible error.

Mr. Goettel: Can you tell us in what case that was?

Mr. Stim: Wait a minute. I am making a statement.

The Court: Wasn't there a case that went up from this court where the use of it was sustained?

Mr. Goettel: I don't remember any case on it, but I know this, your Honor. Any cases concerning the point, concern the defendant on the Fifth Amendment.

Mr. Stim: But, your Honor, he is not invoking the Fifth Amendment now. Suppose I have invoked the Fifth Amendment in 1956.

The Court: Why can't he show that he did before the Grand Jury?

(695) Mr. Goettel: It is a prior statement, contradictory statement before the Grand Jury.

Mr. Stim: It is the most prejudicial thing.

Mr. Goettel: I know it is prejudicial. It shows the man's testimony is false.

Mr. Stim: And if your Honor will permit it, I will ask for the withdrawal of a juror. It is very unfair.

Mr. Goettel: If your Honor please, the defense has called this witness. They have used him to give testimony to their own interests and he has given substantial testimony for them, much of which he could not give before the Grand Jury. I intend to show the contradiction.

The Court: As a matter of fact, you asked the same thing yourself.

Mr. Stim: What?

Mr. Goettel: About the Fifth Amendment.

Mr. Stim: No, I said, did you testify in the first trial before the Grand Jury? He said, "No, I invoked the Fifth Amendment." He is the one who invoked the Fifth Amendment. That is the first time I ever heard it.

The Court: You may ask him if he invoked it (696) before the Grand Jury.

Mr. Stim: May I say this, your Honor. Your Honor can see very well, he is depriving this man of his constitutional rights and depriving any client of his rights.

The Court: As a witness, he can do that.

Mr. Stim: The other people stated they invoked the Fifth Amendment. If he wants to admit it, all right.

The Court: Withdraw this question.

Mr. Goettel: Ask him whether he claimed it.

The Court: I will pass on that.

(End of discussion at side bar out of the hearing of the jury.)

Mr. Stim: Is that question being withdrawn?

Mr. Goettel: I will withdraw that question.

Q. Mr. Waterman, were you asked the following questions before the Grand Jury. These are the questions only, Mr. Stim.

Mr. Stim: Well, wait a minute. All right, go ahead.

Q. "Q. When you received these various payments, what did you do with them?"

And the next question was——

(697) Mr. Stim: Your Honor, if that is the answer that we talked about, and I think before it was answered, I ask your Honor to rule on the admissibility of that answer.

Mr. Goettel: I am not asking for the answer to that question.

The Court: I will sustain his objection now. You may ask him certain other questions.

Q. And were you asked before the Grand Jury as follows, the following questions:

"Q. Where would you deposit them? What bank?"

Were you asked those questions? A. I assume that I was, if you have it there, in the minutes.

Q. Were you also asked this question:

"Q. What sort of books and records do you keep?"

A. I have no recollection whether I was asked that. If you have it there, I will concede that I was asked it.

Q. Do you recall the answers you gave to those questions? A. I do not at this time.

(The following discussion took place at the (698) side bar, out of the hearing of the jury.)

Mr. Goettel: I now propose to ask him if he proposes to read the answers to those questions. If not, I will ask him that.

The Court: Do you state that he raised the Fifth Amendment before the Grand Jury?

Mr. Goettel: Yes.

Mr. Stim: Your Honor, is that inconsistent with the statement that he gave here about the deposit in the Trust Company of North America? This is not inconsistent.

The Court: Can't he show that?

Mr. Stim: No.

The Court: That he raised the Fifth Amendment in response to these questions?

Mr. Stim: He cannot, your Honor.

The Court: Why not?

Mr. Stim: That would not be inconsistent. The man refused to answer at one time.

Mr. Goettel: Would this be proper: Would your answers, or your answers to those questions, be incriminatory?

Mr. Stim: No.

Mr. Goettel: If he says no, then I can ask (699) him.

Mr. Stim: If you ask that question, I will ask for the withdrawal of a juror.

The Court: Can you ask him? Can you ask him, "Did you raise the question of a Fifth Amendment?"

Mr. Stim: No.

The Court: Icannot possibly see any objection.

Mr. Stim: I cannot stop you, if your Honor will permit it.

(End of discussion at side bar out of the hearing of the jury.)

Q. "Where would you deposit them?"

"Q. What bank?", and then,

"Q. What sort of books and record do you keep?" When you were asked those question, did you reply that any answer might incriminate you?

Mr. Stim: Just one moment.

The Court: Why not do as I suggested?

Mr. Goettel: I thought I was.

The Court: I will rule on the question, but will you do as I asked, as I suggested it be asked, Did you say so and so before the Grand Jury?

Q. Did you claim your rights under the Fifth Amendment before the Grand Jury in answer to those questions?

(700) Mr. Stim: Your Honor, at this time I move for the withdrawal——

The Court: You make an objection?

Mr. Stim: I object to that question.

The Court: Overruled.

Mr. Stim: And I ask for the withdrawal of a juror.

The Court: Overruled, denied.

Mr. Stim: Exception.

A. I am sorry?

Mr. Goettel: Will you please read the question?

(Pending question read.)

A. If it is stated there that I did, I did.

Q. Yes or no. A. If it is stated there that I did——

Mr. Stim: Will your Honor state that every citizen——

Mr. Goettel: Your Honor——

Mr. Stim: Just one minute, you made a speech.

The Court: Address the Court.

Mr. Stim: I respectfully ask the Court to instruct the jury that every citizen has a right under the Constitution of the United States——

Mr. Goettel: I want these speeches before (701) your Honor and not for the jury.

The Court: He has a right to make that choice.

Mr. Stim: He has a right to make that choice and invoke his constitutional right, and that is not to be inferred as any evidence of guilt on the part of the defendant.

Mr. Goettel: Your Honor, I object to these continual statements on the part of the counsel in front of the jury.

The Court: There is no necessity for that at this time except to say that the raising of that issue, if it is raised by this counsel, or this witness, is not in any way to reflect upon the defendant.

Mr. Goettel: What was the last question and answer?

Mr. Stim: Your Honor, how many times must we have this question and answer?

The Court: Just wait a minute, Mr. Stim. Read the question.

(Pending question read.)

Q. I want a yes or no answer, whether to the best of your recollection you claimed the Fifth Amendment when you were asked those questions.

Mr. Stim: May I have the same objection, (702) your Honor.

A. I do not recall whether I did or not.

Q. Do you recall making these answers to these questions:

"Q. What bank? A. I refuse to answer, Mr. Goettel.

"Q. On what grounds? A. On the grounds that it may incriminate me."

Mr. Stim: Your Honor, I have an objection to all that line.

The Court: Yes, your objection has been noted and your objection has been overruled.

Q. Do you recall making those answers at that time? A. I don't recall it, but if it is down in the minutes there, then I made it.

Q. Do you recall making this answer to this question:

"Q. What sort of books and records do you keep? A. I refuse to answer on the grounds it may incriminate me."

A. I don't recall it but the same thing, if it is down there, then I made it.

(703) Mr. Goettel: I have no further questions of this witness.

The Court: Any redirect?

* * * * *

(706) SING KEE, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

* * * * *

Cross-Examination by Mr. Goettel:

* * * * *

(862) Mr. Stim: If the District Attorney will give us the total, maybe I will concede it and we wouldn't have to go through it, total admissions.

Mr. Goettel: My total admissions between mid 1950 and mid—rather, late 1952 is about 60.

The Witness: 60?

Mr. Goettel: 60.

The Court: Do you want to concede it?

The Witness: Within a period of——

Q. A little more than two years. A. That may be true. I am not going to dispute that your Honor.

(863) Mr. Stim: I will concede that. There is no mystery about it.

The Court: It is conceded.

Mr. Stim: 60 admissions of children were brought in on these papers.

Q. In addition to the 60 who got in in this little over two-year period, for how many others did you make application? A. A great many of them. I can't count them.

Q. Might it be as many as 200? A. Well, I don't think as many as that.

Mr. Stim: Don't shake your head. I can't hear you.

A. It would be just guessing. I don't think as much as that.

Q. And what was the average amount that you netted for services during these years for these boys for whom you made application?

Mr. Stim: I object to that, your Honor. That is not relevant in this case. If an application is made, he is not charged with violating the law because he made an application or because he engaged in this business. That is not charged as being unlawful.

The Court: I will allow it.

(864) Mr. Stim: Objection.

The Court: What was the average amount?

The Witness: A little over a hundred dollars each.

Mr. Stim: What was the answer?

The Witness: A little over a hundred dollars each.

Q. You cleared a hundred, that is after disbursements? A. Yes, that is correct.

Q. Now, these services of which you speak, can you give the jury some estimate—let us take 1951 as the year.

In 1951, what per cent of your income came from travel commissions and what percent came from these services? A. I have some restaurant income and so forth, too. I have to refer to my income tax.

Q. Confine it simply to the travel agency— A. I am not going to get into a guessing contest.

Q. I am not asking you to guess. Simply forgetting about your restaurant interests and forgetting about your real estate interests and your dividends and stocks, anything else, forgetting about all that, (865) just the travel agency.

Mr. Stim: I object to that. How is that relevant?

The Court: Overruled.

Q. Just the travel agency. What percentage of the gross income of the travel agency came from commissions— A. I have to refer to my income tax return now. I am not trying to guess.

Q. Give us your best recollection. Do you have any recollection?

The Court: What is the specific question?

Mr. Goettel: 1951.

Q. In 1951 what percentage— A. I would have to guess.

The Court: Wait until he asks the question.

Q. In 1951, from the China Overseas Travel Service only, what percentage of gross income came from travel commissions and what per cent came from services, roughly? A. I can't define the percentages. I would say the gross income now without deduction for expense must be over $1[illegible] (866) a year.

Q. I do not want sums, Mr. Kee. I am asking you for percentages. A. I can't subdivide these categories at the present time. Just what you are asking me now is a matter of memory.

Q. The travel commisison is quite a different thing from the services? A. Yes.

Q. And you kept a very accurate record of your travel commissions? A. I have to, yes.

Q. Would you say you made more money from travel commissions or did you make more from services? A. I can't answer that question without referring to my records.

Q. All right, I will refresh your recollection.

Mr. Goettel: Will you mark this for identification?

(Government's Exhibit 17 marked for identification.)

Q. I show you Government's Exhibit 17 for identification and I ask you if you can tell us what it is (handing to witness.)

Mr. Stim: Your Honor, I do not want to identify it. Just did he see it and then we will see from that point on.

(867) A. 1950 income tax.

Q. 1950 or 1951? A. For the year 1951.

Q. That is your income tax? A. That is a copy of my income tax return.

Q. Now, if you will turn to the page that concerns your travel agency and tell the jury from this about what per cent of your income came from commissions and what came from services.

Mr. Stim: Your Honor, I object to using any of this information in that record on the ground that, as I understand the law to be, information in an income tax report is confidential and cannot be used for any purpose except in an income tax case where a man is charged with evading the income tax law.

Mr. Goettel: If your Honor pleases, Mr. Stim's knowledge of the law is incorrect.

Mr. Stim: I admit that it is possible.

Mr. Goettel: It is confidential but there is access to them granted to the United States Attorney's office or to the Justice Department for use in criminal proceedings, and they are public records, the return, that is, which may be used for impeachment purposes.

The Court: I will allow it.

(868) Mr. Stim: May I have an objection? I am not certain about the law.

Q. Have you refreshed your recollection? A. May I have this with me while you are questioning?

Q. Oh, yes.

Have you refreshed your recollection from your record? A. Yes.

Q. Now, tell the jury approximately what per cent of your income came from services and what came from commissions? A. Commissions, $6,100——

Q. Just give us rough percentages.

Mr. Stim: Let us have the amounts.

Q. All right, go ahead. A. $6,127.

The Court: This is in 1951?

The Witness: For the year 1951.

A. Services $13,393.

Q. So on a gross basis the amount you received from services is twice that you received from commissions?

Mr. Stim: Your Honor, that is argumentative. We have the figures. The jury, I think, knows how to add.

The Court: Objection sustained. No use (869) getting excited about it.

Q. Your testimony, from your refreshed recollection, is that income from services was a little under $13,400; correct?

Mr. Stim: Your Honor, we have that already.

The Court: Yes, that is in evidence. Sustained.

Q. How much, with your refreshed recollection, did you pay in legal fees during that year?

Mr. Stim: I object to that again, your Honor, to that testimony, on the same ground as before.

The Court: Overruled.

A. This is the legal fee sent to Mr. Booth. $1,300 to Mr. Booth alone. It doesn't include the fees paid to Mr. Harry Dow.

Q. You did not feel like deducting those fees? A. No. I am taking the net in already by that time.

Q. In other words, the services don't include the sums you received and paid out in cash? A. Not the local fee in New York City.

Q. Actually the total services is probably a great deal greater than $13,000; is that right?

Mr. Stim: I object to that. The money was paid over to other attorneys for legal services.

The Court: This is proper cross-examination. (870) Overruled.

Mr. Stim: All right.

The Court: All right, repeat the question.

(Question read.)

The Witness: Read it again, please.

(Question reread.)

A. The gross, yes.

Q. Now, if the net figure of $13,400 is substracted by the payments listed there to Mr. Booth in the sum of $1,300, I believe it leaves a figure of about $12,000 for services.

Mr. Stim: Your Honor——

The Court: That is arithmetic. I think that would have to follow.

A. This is in the record, isn't it?

Q. Yes, it is in here. What did you do to earn $12,000 services during 1951?

Mr. Stim: Your Honor, I object to it. We had it over and over again. He stated what he has done.

The Court: I will allow it.

The Witness: You will have to read the question over again.

(Question read.)

A. For all the services that I previously said here.

(871) Q. What was that? A. They are not all interpreter's fees, not all immigration fees. They are also for my services outside of the travel service.

Q. What did you do outside the travel service? A. I represent the Chinese——

The Court: What is that?

The Witness: I represent Chinese in various organizations there. I get paid for it.

The Court: You represent; what do you mean by that?

The Witness: Well, what I mean to say is this is not all immigration fees.

The Court: Tell us what it is, then.

The Witness: It represents—the outgoing fees are included with the incoming fees.

The Court: What is included in this incoming figure of $13,393 other than matters relating to immigration?

The Witness: Interpreter's fees and going to——

Mr. Stim: A little louder so I can hear you.

A. For service charges for outside work.

The Court: What kind of outside work?

The Witness: Well, making leases out and so forth.

(872) The Court: Making out leases for people?

The Witness: I wouldn't make them out. I would go to lawyers with them. Interpreter's fees, that's all.

The Court: What is that?

The Witness: Interpreter fees.

The Court: Solely as interpreter's fees.

The Witness: Yes.

The Court: So the only thing was interpreter's fees; is that right?

By Mr. Goettel:

Q. How does that real estate work get connected to the China Overseas Travel Service? A. That real estate is located at 11 Mott Street. It is a tenement building. It is owned solely by my family. It is on my wife's name except one or two qualifying directors' shares.

Q. And that was the only real estate work for which you had to do any interpreting? A. No, for outside interpreter work, not that.

Q. How was your outside interpreter work connected with China Overseas Travel Service? A. I would say at least two or three thousand dollars that would be outside work. Would you want that answer there? (873) I don't want to describe it so completely.

Q. I want to know how it is connected with the China Overseas Travel Service. A. It isn't.

Q. That is your answer, it isn't connected; but it so appears on your income tax, doesn't it?

Mr. Stim: Your Honor, it says nothing in the income tax.

A. I don't think it shows that.

The Court: If there is a question, answer the question. If there is a statement, disregard it.

Q. Is there contained in the $13,000 anything other than from the China Overseas Travel Service in the 1951 return? A. It is not so stated in the income tax return. It is my personal services, for money I received. It is not connected. May I have that tax return again?

(Mr. Goettel hands document to witness.)

A. Commission for services. That doesn't call for——

Q. It is not connected with these services here? A. Not all of it. Some of it is.

(874) Q. What sum? A. I say outside of maybe two or three thousand dollars I would receive somewhere else as interpreter fees for various other functions.

Q. But you included them under your income from China Overseas Travel Service? A. That is my personal income return. It is not China Overseas' income tax return.

Q. Will you read to the jury what it says here, right up there?

Mr. Stim: He doesn't have to read it to the jury. Let him look at it to refresh his recollection.

Mr. Goettel: I will read it to the jury.

Mr. Stim: Your Honor, it is not in evidence.

The Court: It is not in evidence.

The Court: You tell the jury, refreshing your recollection——

A. Why don't you show it to them?

The Court: Wait until he asks the question. You constantly interrupt. Please don't.

Q. You tell the jury, with your recollection refreshed, what you typed in above this "Services" (875) as to what business or profession it pertained. A. Let them examine the return and be through with it.

Q. They can't.

The Court: You tell them.

The Witness: Shall I say?

The Court: Yes.

A. The services there is not totally from the service——

Q. Just tell them what it says above. What have you typed in above? A. "Nature of business, travel agent; business name, China Overseas Travel Service; business address, 11 Mott Street."

Mr. Goettel: Thank you. Mark this for identification, please.

(Government's Exhibit 18 marked for identification.)

Q. Can you identify this, Government's Exhibit 18 for identification? A. It is a copy of my income tax for 1952.

Q. Will you refer to the page concerning the China Overseas Travel Service, page 4?

Mr. Stim: Your Honor, may I have an (876) objection on the same ground?

The Court: Yes. Overruled.

Q. And with your recollection refreshed, will you tell us approximately what percentage of your income came from commissions and what was——

The Court: Give us the figures.

Q. Give us the exact figures, if you prefer. A. Commission, $4,363; services, $12,005——

Mr. Stim: How much?
The Witness: It is blurred.

A. (Continuing) We will call it $12,510 for the purpose of this hearing. It is blurred.

Q. That is close enough. Roughly $12,500.

And what were your legal disbursements that year?

The Court: That is for legal fees.
Mr. Goettel: Legal fees, 1952.

A. This legal fee——

The Court: Just tell us what it is.
The Witness: $1605.

Q. Did that include Mr. Dow's? A. No, no local people.

The Court: Just to Booth?

(877) The Witness: Booth and maybe somebody else. I don't know.

The Court: Where else would it be—other lawyers?

The Witness: In Washington, yes.

The Court: Who else?

The Witness: Mr. Warner H. Parker and Lambert O'Donnell.

The Court: Did you send out any of those little slips to the Government as to payments?

Mr. Stim: Your Honor, that is not required unless the payment exceeds —

The Court: I am just asking him if he sent out any.

Did you send out any slips showing the persons to whom you made payments? Is it over $600?

The Witness: I don't think I did on legal.

The Court: All right.

By Mr. Goettel:

Q. This leaves you with a net after services which you will admit to of approximately $11,000,

Mr. Stim: Your Honor, what is that question? I object to that statement.

The Court: Sustained in that form. (878) The objection is sustained.

Q. How much does that leave you net for services after deduction of legal fees? A. I will have to refer to the income tax return.

Mr. Stim: I object.

The Court: It is a little less than $11,000.

Q. Will you tell the jury what you did for that $11,000, what services you performed? A. Will you show me the tax return again? I might refresh my memory with the tax return.

Q. Your attorney does not believe you understand the question. I am asking you what services you performed for that $11,000?

The Court: The balance between the $12,510 and the $1605.

The Witness: This is for the year 1952 you are talking about?

The Court: 1952, yes.

A. Outside of approximately between $2000 and $2500 which I received for interpreter's fees other than Immigration and Overseas work, this is all my earning in China Overseas Travel Service.

(879) Q. What services did you perform? A. Interpreting where I am called out.

Q. I believe you testified earlier that you expected to make an interpreter fee in the Sum Yuen Quay case in the event that the court action came on? A. That's what I said.

Q. Mr. Waterman has tried some of these court actions, has he not? A. Maybe one or two. That's all I know.

Q. Were you the interpreter at those court actions? Yes or no. A. No.

Q. Were you present in court? A. No.

Q. I believe Mr. Waterman has had certain examinations conducted of a number of witnesses in these court actions you referred to him; is that correct? A. Yes.

Q. Do you appear as interpreter in any of those? A. No.

Q. Do you remember a case tried over in Newark in 1953 concerning a passport applicant for whom you (880) had papers prepared? A. I was in court then.

Mr. Stim: Answer yes or no.

The Witness: Yes.

Q. Were you the interpreter? A. Yes.

Q. Think about it for a moment. Were you the interpreter? A. I was present in court. I don't know whether I was used as the official interpreter or not.

Q. Were you the one who stood up here and interpreted back and forth? A. No. I wasn't a court interpreter.

Q. How often have you appeared as an interpreter in the courts?

Mr. Stim: Your Honor——

The Court: Confine the period.

Q. Let us say from 1949 on. A. Outside of this appearance in court in Newark, I don't think I appeared in any court.

Q. How many times have you appeared——

Mr. Stim: Your Honor, I object to any——

The Court: There is no question yet.

Mr. Stim: Interpreter in court. (881) He didn't say his services were for interpreter in court.

The Court: I think that is on the record.

Q. How many times did you appear before the Immigration Service since 1949 as an interpreter? A. A number of occasions. I can't remember.

Q. How many times? A. No. I can't remember.

Q. Can you mention any specific cases? A. I wouldn't try and attempt to figure because I say it may be a great many.

The Court: Where did you go with these people who wanted leases drawn?

The Witness: To different attorneys' offices and so forth.

The Court: Which attorneys' offices?

The Witness: Not Waterman; I know that. Whenever they come.

(882) The Court: Various attorneys?

The Witness: Yes.

The Court: Did you accept a fee before you went?

The Witness: No. After it was finished——

The Court: When did you take the fee?

The Witness: After my services was complete they gave me what they wanted. I didn't ask them. It's for the year.

* * * * *

(967) CHARGE OF THE COURT

(LEVET, J.)

The Court: Ladies and gentlemen of the jury:

You are about to enter upon your final duty in this case and decide the facts. My function is to instruct you as to the law that applies, and it is your duty to accept the law as I state it to you and to apply it to the facts as found by you from the evidence.

You are the sole and exclusive judges of the facts. You alone determine the weight of the evidence, the credibility of the witnesses and the reasonable inferences to be drawn from the evidence. You are to approach your duties in a complete attitude of fairness and impartiality, and to appraise the evidence calmly and deliberately and without the slightest trace of sympathy, bias or prejudice for or against the Government or the defendant as parties to this litigation.

The fact that the Government is a party here entitles it to no greater and to no less consideration than that accorded to any other party to a litigation. All parties stand as equals before the bar of justice.

(968) This case must be decided within the charges made against the defendant, Sing Kee, as contained in the indictment.

The indictment is merely a written accusation. It is no evidence of proof of the defendant's guilt. You will not give any weight whatsoever to the fact that an indictment has been returned against the defendant. It does even create, nor should you permit it to create, a suspicion of guilt.

The defendant is on trial upon an indictment which originally contained five counts. He has entered a plea of not guilty, and in denying the charges has put in issue the essential elements of the indictment.

Count 5 of the indictment was dismissed by me at the close of the Government's case. This is the count which charged the defendant with wilfully and knowingly making a false statement in an application for a passport in the matter of Sum Nin Oón. This charge is no longer before you, and I charge you as a matter of law to disregard any testimony submitted in support of the fifth count of the indictment, namely, the testimony of the witness Sum Yuen Quay, also known as Chin Kung Chee.

(969) However, this testimony may be considered by you for whatever it is worth with respect to the conspiracy alleged in Count 1.

The defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. This presumption continues in his favor throughout the entire trial and even during your deliberations in the jury room. It is removed

only if and when guilt is established beyond a reasonable doubt.

The burden of proof is upon the Government to establish the guilt of the defendant beyond a reasonable doubt. The burden never shifts but remains with the Government throughout the trial.

Now, what is a reasonable doubt? A reasonable doubt means a doubt founded upon reason and arising from the evidence or the lack of evidence in the case. It does not mean an imaginary doubt, or a whimsical or capricious doubt, nor is it a doubt based upon sympathy for a defendant.

When all of the evidence in the case, carefully analyzed, compared, and impartially weighed by you, produces in your minds a settle conviction or (970) belief of the defendant's guilt, such a conviction as you would be willing to act upon in matters of the highest importance relating to your own affairs, when it leaves your minds in the condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge, then, and in that event, you would be free from a reasonable doubt, you would be convinced beyond a reasonable doubt and would then be required to find the defendant guilty as charged.

Absolute mathematical certainty is not required but there must be such certainty as satisfies your reason and judgment, and such that you feel conscientiously bound to act upon.

On the other hand, if, after a fair and impartial consideration of all the evidence, you candidly and honestly say that you are not satisfied of the guilt of the defendant, or that you do not have an abiding conviction of his guilt which amounts to a moral certainty, then you have a reasonable doubt and you should find the defendant not guilty.

You are not to be concerned with the question of punishment to be imposed in the event that (971) you find the defendant guilty, as charged. That is a matter which is exclusively for the Court.

In this case, as in most criminal cases, the Government offers direct and circumstantial evidence.

Direct evidence is where a witness who was a participant to the commission of an act testifies to what he saw, heard, or discovered what he knows of his own knowledge—something which comes to him by virtue of his senses.

Circumstantial evidence is that evidence which tends to prove a fact in issue by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the facts exist which are sought to be established. It means that you take one set or state of facts, one circumstance or a set of circumstances, produced before you by evidence, and from those facts reason to a conclusion.

This is legal evidence and you must act upon it as if it were direct, when it is satisfactory to you beyond a reasonable doubt.

However, with respect to circumstantial evidence, if reasonable inferences to be drawn from (972) the evidence lead to two conclusions, one favoring guilt and the other favoring innocence, then it is your duty to accept that which favors innocence.

If the facts and the circumstances and the fair and reasonable inferences exclude any reasonable theory of innocence, and indicate as the only reasonable theory to be deduced therefrom the guilt of the defendant and provided they do so beyond a reasonable doubt, then a verdict of guilty is proper. No conviction can be based upon suspicion conjecture or probabilities.

With these general instructions, let us turn to the specific law upon which the indictment is based and the facts in this case.

Section 1542 of Title 18 of the United States Code
notated declares that:

"Whoever wilfully and knowingly makes any fa
statement in an application for passport with int
to induce or secure the issuance of a passport un
the authority of the United States, either for
own use or the use of another, contrary to the la
regulating the issuance of passports or the ru
prescribed pursuant to such laws; or

(973) "Whoever wilfully and knowingly uses
attempts to use or furnishes to another for use a
passport the issue of which was secured in any w
by reason of any false statement—" shall be gu
of criminal conduct.

The indictment, as it now stands, contains four count
that is, it charges four separate crimes. I shall first
cuss Counts 2, 3 and 4, since they all charge the same k
of criminal violation, but involving different persons. Th
counts, namely 2, 3 and 4, charge the defendant w
'making a false statement, wilfully and knowingly,' in
application for a passport, with an intent to induce
secure the issuance of a passport for the use of anot
contrary to law, by submitting an affidavit to the Un
States Consul in Hong Kong in support of the passp
application, stating that the applicant was the son o
certain individual when, in fact, the defendant then
knew such was not the case.

In Count 2, the defendant Sing Kee is charged with
quitting an affidavit to the United States Consul in H
Kong in support of an application for a passport in
name of Ng Quock Keung, (974) stating that the passp
applicant was the son of Ng Mong On, when, in fact,

defendant knew that the passport applicant was not the son of Ng Mong On.

In Count 3, the defendant is charged with submitting an affidavit to the United States Consul in Hong Kong in support of an application for a passport in the name of Jew Sun Ai, stating that the passport applicant was the son of Jew Ing Gim, when, in fact, the defendant knew that the passport applicant was not the son of Jew Ing Gim.

In Count 4, the defendant is charged with submitting an affidavit to the United States Consul in Hong Kong in support of an application for a passport in the name of Moy Hing Mee, stating that the passport applicant was the son of Moy Mun Sing, when, in fact, the defendant knew that the passport applicant was not the son of Moy Mun Sing.

It is apparently not disputed here that the defendant caused to be submitted affidavits in behalf of the applications alleged in Counts 2 through 4. If you should decide that the passport applicants were, in fact, the sons of the individuals named in Counts 2, 3 and 4, then you need go no further on these counts since the affidavits will not (975) have been false.

However, if you conclude that the passport applicants specified in Counts 2 through 4 were not the sons of the named individuals, then you will have concluded that the affidavits were false.

But the mere fact that the defendant may have submitted false affidavits does not of itself mean that he is guilty of any crime. The false affidavit must have been made wilfully and knowingly with intent to induce or secure the issuance of a passport. You must decide whether the defendant, in submitting the affidavits, made false statements

wilfully and knowingly, in the knowledge that the passport applicants were not, in fact, the sons of the individuals and families named in Counts 2 through 4, with intent to secure the issuance of passports to such persons.

The term "wilfully and knowingly" as used in the statute signifies that the offender must have known what he was doing and with such knowledge proceeded in violation of the statute.

The word "wilfully" means in a wilful manner, by design, with a certain purpose, or intentional.

(976) The word "knowingly" means with knowledge or with a clear perception of truth and is used in contradistinction to conduct which is innocent, ignorant or unintentional.

The purpose and knowledge of the defendant in making false statements, if, in fact, they were false, involve the issue of his state of mind. But it is, nevertheless, a factual issue to be resolved, as are any other factual issues by a consideration of the testimony concerning the activities of the defendant and by reasonable and logical inferences from the facts.

We have no instruments for peering into the brain of a defendant so that we can know what was on his mind at any particular time. But we can learn what is on a man's mind from what he says and does, and a man can be taken to intend the natural and reasonable consequences of his deeds.

The Government claims that the defendant, Sing Kee knew that the passport applicants were not the sons of the individuals under whose names they applied and that the individuals whose names were used created "slots" with the Immigration Service so that imposters might gain entrance to the (977) United States as citizens.

A law was passed by Congress in 1878 which provided that any child born abroad of an American father is also a United States citizen and entitled to enter this country.

The defendant makes no contention that the passport applicants were the sons of the individuals whose names were used. He denies knowing anything about them, saying merely that he prepared or caused to be prepared the affidavits for a fee as part of his service for customers of his travel agency.

If you find that the defendant did not know that Ng Quock Keung was not the son of Ng Mong On, then you must find him not guilty on Count 2. But if you conclude that Ng Quock Keung was not, in fact, the son of Ng Mong On, and that the defendant knew this when he aided in the submission of the affidavit in support of a passport, wherein it was stated that Ng Quock Keung was the son of Ng Mong On, then you will find the defendant guilty on Count 2.

You will be guided by similar considerations in your deliberations on Count 3 with respect to the statement in the affidavit that Jew Sun Ai (978) was the son of Jew Ing Gim.

The same principles are true with respect to Count 4, where the affidavit involved statements that Moy Hing Mee was the son of Moy Mui Sing.

It is not material in the indictment that the defendant did not personally submit the affidavits to the United States Consul in Hong Kong, since whoever wilfully causes an act to be done which, if directly performed by him or another, would be an offense against the United States, is punishable as if he performed the act himself. Likewise, one who either aids, abets, counsels, commands, induces or procures the commission of a crime is guilty as a principal.

The fact that some of the so-called "sons" did not ultimately enter the United States does not negate the alleged violation of the immigration law as charged in the indictment.

Now, we come to a consideration of Count 1 in the indictment, which charges the defendant, along with other specified and unspecified individuals, with having participated in a conspiracy to commit certain crimes relative to the unlawful entry of aliens into the United States.

(979) Count 1 relates to a conspiracy to violate certain specified laws.

I have already spoken to you about Section 1542 of Title 18, which concerns false statements made wilfully and knowingly in applications for passports with intent to secure the issuance of a passport contrary to law.

Section 1425 of Title 18, United States Code, is also specified in Count 1 of the indictment. This section provides:

"Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

"Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of naturalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing," shall be guilty of a crime.

(980) In addition, Count 1 of the indictment also alleges a conspiracy to violate Section 1324 of Title 8, United States Code, which provides in part as follows:

"Any person, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who—

"Wilfully or knowlingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation * * * an alien not lawfully entitled to enter into the United States, shall be guilty of a crime."

Count 1 reads as follows:

"The grand jury charges:

"1. Beginning in and about 1949 and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, Sing Kee, the defendant herein, did unlawfully, wiltully and knowingly combine, conspire, confederate and agree with Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Wing Gim (also known as Jew Ing Gim), Ng Yee Chor, (also known as Ng Quock Keung), Ng Jock Neuy (also (981) known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (also known as Sum Yuen Quay), and George Wong, named as co-conspirators but not defendants herein, and with divers other persons to the grand jurors unknown, to defraud the United States and to commit offenses against the United States, to wit, violate Title 18, Sections 1425 and 1542, and Title 8, Section 1324, of the United States Code."

"2. It was part of said conspiracy that the defendant and other co-conspirators would wilfully and knowingly encourage and induce the entry into the United States of Aliens not lawfully entitled to enter or reside under the laws relating to the immigration of aliens.

"3. It was further part of the said conspiracy that the defendant and other co-conspirators would make false statements and cause false statements to be made in application for passports in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai, with intent to induce and secure the issuance of passports under the authority of the United States for the use of others, contrary to the laws regulating the issuance of passports (982) (Section 211(a) and following, Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations).

"4. It was further part of said conspiracy that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of said applications in the names of Moy Hing Mee, Oon, Ng Quock Keung and Jew Sun Ai.

"5. It was further part of said conspiracy that the defendant and other co-conspirators would submit and file, and cause to be submitted and filed, the aforesaid applications with the consul of the United States of America in and for the consular district of Hong Kong in the British Crown Colony of Hong Kong.

"6. It was further part of said conspiracy that the defendant and the other co-conspirators would knowingly attempt to procure and obtain documentary evidence of citizenship for other persons not entitled thereto, by causing civil actions to be instituted and filed under Section 503 of the Nationality Act of 1940, in the names of Jew Sun Ai, Moy Hing Mee, Chin Nin Oon and Chin Seu Toon, to have them declared (983) citizens of the United States."

Overt acts:

"The grand jury further charges that in furtherance of the said conspiracy and to effect the objects thereof, the defendant and other co-conspirators performed the following overt acts:

"1. In or about 1949, in the Southern District of New York, the defendant Sing Kee had a conversation with Hom Wing Gim at 11 Mott Street, New York, New York;

"3. That on or about December 21, 1949, in the Southern District of New York, the defendant Sing Kee handed Hom Wing Gim an unsigned affidavit at 11 Mott Street New York, New York;

"5. On or about the 24th day of March, 1950, in the Southern District of New York, the defendant Sing Kee handed Ng Mong On an unsigned affidavit at 11 Mott Street, New York, New York;

"6. In or about April, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Chin Kung Chee at 11 Mott Street, New York, New York;

"7. On or about the 5th day of May, 1952, in the Southern District of New York, the defendant (984) Sing Kee handed Chin Kung Chee an unsigned affidavit at 11 Mott Street, New York, New York;

"8. In or about September, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Moy Mun Sing at 11 Mott Street, New York, New York;

"9. On or about the 6th day of October, 1952, in the Southern District of New York, the defendant Sing Kee handed Moy Mun Sing an affidavit at 11 Mott Street, New York, New York, and

"10. In or about December, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with George Wong at 11 Mott Street, New York, New York (Title 18, Section 371, United States Code)."

A conspiracy to commit a crime is a distinct offense from the crime itself, which is the object of a conspiracy. There may be guilt as a result of a conspiracy even though its criminal objective is never accomplished.

A conspiracy may be defined as a combination of two or more persons to accomplish a criminal or unlawful purpose by concerted action. It is a partnership in a criminal purpose, with wilful and (985) knowing participation in the common end, and the gist of the crime is the confederation or combination of minds.

It is not necessary that there must be a proved agreement in words between each of the parties to the conspiracy, but you must find, however, from the action of the parties that there was such an agreement before you may convict. It is sufficient if you find beyond a reasonable doubt that they acted together with a common understanding and a common intent to accomplish an unlawful purpose. It is sufficient to show that the minds of the parties met in an understanding way so as to bring about an intelligent and deliberate agreement to do the act or acts charged, although such an agreement is not manifested by any formal words. A mutually implied understanding is sufficient so far as the combination or confederacy is concerned.

Charge of the Court

The agreement is generally a matter of inference deduced from the acts of the persons involved which are done in pursuance of an apparent criminal purpose. When parties enter into an agreement or conspiracy to do an unlawful act, they become agents for one another, and the act of one in (986) pursuance of the thing proposed is deemed to be the act of all and to make all responsible for that act.

If a scheme or conspiracy is formed by persons, that which any one of them does in pursuance of that scheme or conspiracy is binding on each of the persons who was a party to the scheme and anyone who joined and what any one of the conspirators does or says in pursuance of the scheme is binding on the others.

However, there can be no furtherance of a conspiracy that has ended or one that has not yet come into existence. Therefore, the declarations and acts of a conspirator do not bind the co-conspirator if made before the existence of a conspiracy or after it has terminated.

If and when you are satisfied beyond a reasonable doubt that the conspiracy charged did exist, then you must determine beyond a reasonable doubt whether the defendant was a member of that conspiracy. If the parties acted together to accomplish something unlawful, a conspiracy is shown even though the individual conspirators may have done acts in furtherance of the common unlawful design apart from and unknown to the others.

(987) All the conspirators need not be acquainted with each other. They may not have previously associated together. The defendant may know only one other member of that conspiracy. If, knowing that others have combined to violate the law, a party knowingly cooperates to further the objects of the conspiracy, he becomes a party thereto. It is not required that each of the conspirators shall participate in or have knowledge of all its operations.

He may join at any point in its progress and be held responsible for all that may be or has been done. All the conspirators need not have conceived the conspiracy or participated in its conception. Those who come in later with the knowledge of the aims and purposes of the conspiracy and cooperate in a common effort to obtain the unlawful result become parties thereto.

The first count of the indictment here charges one single conspiracy committed and participated in by the defendant, Sing Kee, and the co-conspirators Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Ing Gim (also known as Jew Ing Gim), Ng Yee Chor (also known as Ng Quock Keung), Ng Jock Neuy (also known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (988) (also known as Sam Yuen Quay), George Wong, and divers other persons to the grand jury unknown.

If you find that the Government failed to prove the one single conspiracy as alleged in the indictment, but tended to prove a number of related and different conspiracies involving various parties, even though the conspiracy to procure citizenship unlawfully and to make false statements in applications for passports is the crime proven in each different conspiracy, then it has failed to prove the crime set forth in the first count of the indictment, which is one single conspiracy involving all of the individuals named.

The crime charged in Count 1 of this indictment is one of conspiracy. The defendant is not charged in that count with having actually committed the acts which constitute a crime. It is, therefore, not necessary to prove as to that count that this defendant, Sing Kee, actually did any of the acts charged as part of the conspiracy, but merely that he conspired or agreed with others that those acts be done.

In determining whether or not a conspiracy existed, you are not to judge the character and ef- (989) fect of the conspiracy by dismembering it and viewing its separate parts, but only by looking at it as a whole.

As part of the conspiracy, it is charged that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of certain passport applications. An affidavit is false and fraudulent so long as any material part thereof is untrue and the conspirators who prepared it were so aware.

To convict the defendant of the crime of conspiracy as charged in the first count of the indictment, there must be a finding by the jury that the defendant entered into a combination or agreement to violate the law. Mere knowledge by the defendant that the law was being violated is not sufficient; mere aid or assistance to violate the law is not sufficient, unless such aid was given by the defendant for the purpose of carrying out the unlawful design of conspiracy as alleged in the indictment.

A defendant cannot be convicted of the crime of conspiracy because of his acquaintance or association with some or all of the parties named (990) as co-conspirators, unless it can be shown beyond a reasonable doubt that such defendant had guilty knowledge of, and with such guilty knowledge participated in the conspiracy in the furtherance thereof.

It is not necessary, in order to constitute a conspiracy to defraud the United States, that you find that the defendant conspired to violate all three sections of the United States Code that are specified in the first paragraph of the indictment, or that he did so in all the matters described in paragraphs 2 through 6. As long as you find that the defendant conspired to violate any one of the statutes or

in any of the matters described, that is sufficient to constitute a conspiracy to defraud the United States.

A conspiracy is not ended as long as the evidence shows an intention to continue on. Once a person is shown to be a member of a conspiracy, he is presumed to continue as such. Of course, a conspirator may withdraw from the conspiracy, but it requires affirmative and effective action thus to withdraw and terminate his liability in the conspiracy.

If you find circumstances of secrecy, (991) intrigue and deviousness, or attempts to conceal the real nature of the transaction, you may consider them along with other evidence in the case. It is not always possible to prove a conspiracy by direct evidence and, therefore, circumstantial evidence is necessary.

The reason for this is that conspirators do not usually openly proclaim their intentions. Their methods may be devious, hidden and secret.

In addition to the conspiracy, there must be an overt act performed by someone in the conspiracy to effect the objects of the conspiracy. Such an act is something more than evidence of the conspiracy. It constitutes the execution or part execution of the conspiracy.

The overt act need not be a criminal act, if considered separate and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or making a telephone call. It must, however, be an act which follows and tends to accomplish the plan or agreement and must be done knowingly in furtherance of an object or purpose of the conspiracy, and you will remember what I read to you with respect to the overt acts.

(992) The conspiracy is complete on the forming of the criminal agreement and the performance of at least one overt act in furtherance thereof. The overt act may

be that of only a single one of the conspirators and need not itself be a crime. It is unnecessary to allege overt acts on the part of each member of the conspiracy.

However, the Government must prove beyond a reasonable doubt that at least one of the overt acts set forth in the indictment was actually performed and committed by the person alleged therein to have done so.

The fact that an alien successfully gained entry into the United States under a false name and identity and has used that false name and identity in public dealings in the United States does not make his further use of this name in passport applications, or other sworn documents, legal, and if the defendant, Sing Kee, had knowledge that the alien was posing under an assumed name and, nevertheless, conspired with him in the filing of such false statements, or aided, abetted, counseled or procured the filing of such false statements, he is guilty of violating the laws of the United States.

(993) However, if you believe that the defendant acted without knowledge that the alien was posing under an assumed name, then he is innocent of the crimes charged.

The mere use of a different name, if for no illegal purpose, is not a crime.

The evidence in this case, as I see it, is as follows, and please keep in mind that my recollection, or that of counsel, is not to be taken in place of your own recollection of the facts or the evidence in the case:

As to Count 2, the case of Ng Quock Keung, the principal witnesses for the Government were, first, Dong Soon Chor, the alleged seller of the so-called paper, also known as Ng Mong On; second, Ng Yee Pon, the alleged purchaser, also known as Ng Gim Ting, and thirdly, Ng Yee Chor, the applicant, also known as Ng Quock Keung.

Dong Soon Chor, also as Ng Mong On, testified as follows: He was born in China on October 12, 1914, came to the United States under the name of Ng Mong On in 1934. He married in Hong Kong to Woo Lan Ying before he came to the United States; he had no children by her.

(994) In 1936, when he returned to China, he reported that a son, Ng Quock Keung, was born to him and his wife. His wife came to the United States in 1948.

In 1949, he saw a friend, one Woo Lim Jee or Gee, and through him he met Ng Yee Pon, also known as Ng Gim Ting, at the Pagoda Restaurant at Mott Street. Dong, his wife, Ng Yee Pon and Woo Lim Jee were present in January, 1950. Ng Yee Pon said he wanted to buy Dong's paper. Dong agreed to sell the paper for $1800. He received $300 and the balance after the boy came in. Later that day, Dong, his wife and Ng Yee Pon went to 11 Mott Street to see Sing Kee. Dong had known Sing Kee, he testified, from the On Leong Association or merchants' association, in which Sing Kee was secretary for a long time. He said he is a Dong man. He said that.

Dong told Sing Kee that he had sold the paper to Ng Gim Ting and told him to take care of it. Sing Kee, as the interpreter said, accepted to take care of it. Ng Gim Ting talked to Sing Kee alone.

A few weeks later, Dong went to see Sing (995) Kee at his office at 11 Mott Street. Dong told Sing Kee his family history. Sing Kee prepared two family histories, one for Dong and one for Ng Yee Pon.

Some weeks later, Dong went back to see Sing Kee. Sing Kee gave Dong an affidavit to sign and then had his wife sign affidavits, which are in evidence, and are available to you. Pictures of Dong as Ng Mong On and a boy purporting to be Dong's son, Ng Quock Keung, are attached.

Although the oath on the document appears to have been taken before Louis S. Treglia, Dong says he did not appear before Treglia or sign it before Treglia. Dong signed it at Sing Kee's. Dong gave his picture to Sing Kee to prepare the paper. He first saw the applicant's picture when he prepared this paper. He had never seen this person in the flesh before he saw this picture.

Later Dong saw the boy when he came into the United States. Dong and his wife prepared themselves to testify at the Immigration Service by reading the coaching papers on family history, which he said was prepared by Sing Kee. The boy was admitted and went to live with his uncle, Ng Yee Pon, (996) at Paterson, New Jersey. Over a week later, Dong went to Sing Kee's office with Ng Yee Pon and told him that the boy had been admitted and a few months later Dong, Ng Yee Pon and Ng Quock Keung went to Sing Kee's office and asked him to help get a certificate of citizenship for Ng Quock Keung. Dong signed a letter which Sing Kee gave him.

On cross examination, Dong admitted that he conducted his laundry business as Ng Mong On. At Ellis Island, his lawyer was Harry H. Dow, also known as Hom Yuen. He had known Ng Yee Pon before he met him at the Pagoda Restaurant in January, 1950.

The second witness was Ng Gim Ting, also known as Ng Yee Pon. He testified he was a restaurant keeper from Paterson, New Jersey, born in 1897, came here in 1913. When in China in 1947, the mother of Ng Yee Chor, apparently a distant cousin and who came in later as Ng Quock Keung, came to the boy to see him. In late 1949, he talked to one Woo at the Chinese Community School, who told him he knew someone who had a citizenship paper for sale. Woo introduced him to Ng Mong On. Dong apparently wanted $1800 for the paper, and Ng Yee Pon

said he would pay it, and they went to (997) Sing Kee to have it prepared. He told Sing Kee that he, Ng Mong On, sold him a paper, and he asked him to prepare the paper for him. He asked him how much he charged and Sing Kee said $400. Sing Kee told him to bring some photographs of Ng Yee Chor, of the boy.

A few weeks later, he again visited Sing Kee and took the pictures of Ng Yee Chor, the boy, to him and asked him if the paper was ready. Several months later he returned and Sing Kee gave him the paper and said, "Send it to boy." Sing Kee gave him a coaching letter, which he registered by mail to send to the Sing We Tong store in Hong Kong. He then paid $400 to Sing Kee. He also sent $200 to Ng Yee Chor at Hong Kong. He purchased an airplane ticket through Sing Kee for $800, eight or nine hundred dollars.

When Ng Yee Chor arrived in the United States, he took him to Paterson, New Jersey, the second day, where the boy went to school and worked in Ng Gim Ting's restaurant.

Ng Yee Chor testified that when he came to the United States he was Ng Quock Keung. He was born in Gim Jung Village, China, eighteen years ago. (998) His father was Hok Shuck and his mother is of the Lee clan. Neither his father nor mother has been in the United States.

He met Ng Yee Pon in China, came to the United States in March, 1951, and then, first using the name of Ng Quock Keung, he lived for a while at Hong Kong where, he said, Ng Yee Pon paid his expenses, paid his traveling expenses. He had a coaching paper in Hong Kong, which he received by mail, from which memorized the family history, and after being admitted, he saw Sing Kee with Ng Mong On.

So much for the Government's case on Count 2.

With respect to the defendant's case, Sing Kee said he was an interpreter for the Naturalization and Immigration

Service from 1919, I believe it was, to 1928. Since then he has operated the China Overseas Travel Service at 11 Mott Street. He assisted clients in filling out applications for passports and visas. As he said, he tries to "process the people coming over from Asia and Hong Kong," a service commencing about 1946 or 1947.

You heard his testimony with reference to Albert Kee, his brother, and Wilbur Chung, another person who came to the office from time to time; like- (999) wise his testimony with reference to Roland Crean, the stenographer.

Sing Kee himself testified in reference to this Count 2. This is the defendant's testimony with reference to Count 2. He saw Ng Mong On in March, 1950, when Ng came with his wife to see Sing. Ng Mong On wanted papers drawn so that his son could come into the United States. Ng gave him a certificate of identity and papers with family data. Sing does not remember anyone else with Ng except the wife, but he had sold tickets to Ng's constituents in 1947 or 1948. From these papers an affidavit was prepared, apparently was prepared in Harry Dow's office. Ng Mong On took papers and came back with some corrections, and these he gave to Roland Crean to do over. They were signed and notarized and Sing took two copies to Dow and two to Ng. Ng Mong On gave him the photos, paid him $100, and Sing paid Dow.

Later in the summer, Ng Mong On came back and said he would like to expedite the application (1000) with the State Department. Sing mentioned Booth as an attorney and sent it out to Washington. Still in the summer of 1950, Ng Mong On came back and ordered the ticket, and then Ng Yee Pon brought the money saying, "This is the money for Ng Mong On's ticket." When Ng Quock Keung came, Ng Mong On came to his office and said he wanted counsel.

Sing suggested Harry Dow. The boy was admitted. Ng Yee Pon gave him $300 and he paid one hundred to Dow and $75 to Booth. Sing says he never knew about the "slot" and he denied knowledge that Ng Quock Keung was Ng Yee Chor. He denied knowledge about the sale of the papers. He said no coaching papers were prepared in his office.

His brother, Albert Kee, did some typing of passport applications in his office. Wilbur Chung also worked in a printing and knows Chinese. So much for Count 2, in the Ng Quock Keung case.

As to Count 3, the Jew Sun Ai case, the principal witnesses for the Government were Hom Ing Gim, also known as Jew Ing Gim, the alleged seller of the paper, and Ng Yee Pon, the same person as Ng Gim Ting, the alleged purchaser.

Hom Ing Gim, also known as Jew Ing Gim, (1001) testified as follows: He is a member of the Hom family, born in 1905. He came to the United States in 1923, made his first return trip to China in 1930. His wife's name is Yip Shee. He returned here in 1932. He reported a child, Jew Sun Ai, born August 1, 1931, but no such child was ever born to him.

He knew Ng Gim Ting, also known as Ng Yee Pon, while on a ship to China in 1947.

In 1949, he returned and he went to work for Ng. Later he met Ng Yee Pon in Mott Street and Ng asked him if, when he went to China, he claimed any so-called "boy papers." Hom said yes, and he asked $1,000 for the paper.

Two days later they went to Sing's place to have the paper made. Ng Yee Pon told him, "This is Sing Kee." Ng went out first. Then Hom gave some coaching papers to the person he called Sing Kee's partner, apparently at Sing's request.

About two weeks later, Hom went back and signed the paper. He had never seen the picture of the applicant. He had given his certificate of identity to Ng.

A third time he went back to Sing Kee to get his papers, so-called coaching papers, which he (1002) says Sing Kee gave him. Later Sing Kee told him the boy would not come to the United States, they have to have blood tests.

Then Ng Yee Pon testified as to this case as follows:

In 1947, while he was in Toishan City, China, the mother and the father of one Ng Jock Neuy came to see him, just cousins, and after he came, returned to the United States, he spoke to Jew Ing Gim, also known as Hom Gim, about Ng Jock Neuy, which was in November or December, 1949.

Ng Gim Ting told Hom that he wanted to buy a paper. Hom said he had one for sale. The paper was in the name of Jew Sun Ai. The witness wanted it for Ng Jock Neuy, and he agreed to pay a thousand dollars for it, he said.

Two days later, as he testified, he went to Sing Kee's place to fix the paper. He told Sing he bought a paper from Hom Gim and tried to get a boy to come to the United States. Sing said that was all right, that it cost $200 apiece, to try to bring some pictures.

When Ng Gim Ting went out, Hom Gim was in the waiting room.

(1003) The next time Ng Gim Ting took pictures to Sing Kee, he was asked about the paper. A month later, he went back again and Sing give him the paper and a coaching book. These were sent to Hong Kong, to Ng Jock Neuy, at this store, and he paid Sing Kee $400 and sent Ng Jock Neuy two hundred for expenses, but he never paid Hom the thousand dollars.

The application, of course, was denied. Ng Jock Neuy, of course, did not come to the United States. The witness told Sing Kee, and Sing Kee asked if he wanted to appeal to the court and he said he did. Apparently an action was brought by Jew Ing Gim as father of the alleged Jew Sun Ai, and the attorney was Waterman.

In opposition and in defense of this Count 3, the defendant testified as follows:

The first time Sing knew Jew Gim was in 1949, was when Ng Yee Pon brought him to his office and he said, "They wanted some papers prepared for him." Ng Yee Pon told "us", "he is my cook, prepare the papers, and I will buy the ticket for him."

Then Jew Ing Gim brought the pictures. The conversation, he said, was with Ng Yee Pon. "Jew Ing Gim gave me a certificate of identification with two (1004) pictures." Jew Ing Gim said, "I want to make a paper for my boy." Either Sing's brother or one of the other boys in the office took them over to Dow's office and the papers were prepared there.

Jew Ing Gim came back in about two or three months, and towards December of 1952, Ing Yee Pon came in with a letter of denial and said he wanted to take court action. Sing recommended him to Waterman, and he filed a complaint.

Later, Ng Yee Pon came in and said he wanted to keep the complaint going. However, Sing doesn't remember seeing Jew Ing Gim on more than two or three occasions.

Sing says there was no talk of buying or selling a slot between Sing and Ng Yee Pon or Jew Ing Gim. But he was not informed that the boy for whom the application was made was not the son of Jew Ing Gim.

Waterman testified that either Albert Kee, the defendant's brother, or Wilbur Chung, came with Jew Ing Gim to his office in December, 1952, that Jew Ing Gim gave him an affidavit and he talked with him through either Wilbur or Albert, an dthe complaint was signed by Jew Ing Gim.

(1005) Sing paid Waterman $100. The case was discontinued in November, 1955. Waterman said he did not know anything was wrong.

Now, we come to Count 4, the Moy Hing Mee case. The witness for the Government here was Moy Mun Sing, who testified as follows:

Moy was born in Hoboken, New Jersey, in 1894. He made three trips to China. In 1919, he married in China, and there his wife gave birth to three boys and one girl. The girl was called Moy Fung Mee, the boys were called Moy Hing Kwong, Moy Hing Fong and Moy Hing Tung.

Moy reported his daughter, actually Moy Fung Mee, as a son under the name of Moy Hing Mee. The two boys, Moy Hing Kwong and Moy Hing Fong, apparently came to the United States without difficulty.

The third son, Moy Hing Tung, was in Hong Kong in 1952, and Moy wished to bring him in. He went to see Sing Kee, talked about the paper. Then he went back the next week. Sing's assistant showed him a picture and told him to go in to see Sing.

Sing told him of someone who had an interest in the paper, someone willing to pay $1500 (1006) with respect to this paper.

Moy paid Sing $50 for the fee on the Moy Hing Tung paper, and agreed to pay the rest, $450, I believe it was, but Moy Hing Tung never came to the United States. Moy also signed the paper for the admission of the fictitious

Moy Hing Mee, whoever he was, in Sing's office. He said he never saw the picture of the party or person posing as Moy Hing Mee, nor had he ever seen this person so pictured, in the flesh. This person apparently did not come in and he never got his $1500.

As to this case, Moy Mun Sing, the defendant Sing Kee testified as follows:

He said he met Moy Mun Sing first about May, 1952, at his office. Moy told him that he wanted to bring in his two sons. Moy had a certificate of identity. Crean prepared the papers, two different sets of affidavits, one for each boy, Moy Hing Tung and Moy Hing Mee. Moy gave him photographs and a memorandum of family history. The papers were sent to Booth to send to Hong Kong. Sing received $50 on each occasion.

Several months later, Moy returned to the office. He told Sing he wanted to file suit for (1007) both sons. Sing sent him to Waterman with his brother Albert, or Wilbur Chung. He came back later and again Sing sent him to Waterman.

Sing says he had no conversation with Moy about purchase or sale of a "slot." He says there was no conversation about a payment of $1500.

Sing denies any conspiring with anyone to violate the laws of the United States and denies that he ever prepared an affidavit known by him to be untrue or false.

Waterman also testified in this case that on December 4, 1952, Moy Mun Sing, with either Wilbur or Albert, Wilbur Chung or Albert Kee, came to his office. Moy gave him a copy of the affidavit. He prepared a complaint which was signed later by Moy Mun Sing. He testified Moy was at his office on November 22, 1955, with

an interpreter. He never paid a fee. Waterman withdrew from the case and he, Waterman, never knew anything was out of order.

So much for these counts, 2, 3 and 4.

As to Count 1, the conspiracy charge, the Government submitted testimony of the witnesses already mentioned. In addition, there were three other cases. The first of these was Chin Sung Hong, (1008) the Chin Sung Hong case. Here the witness for the Government was Chin Ming Mow, the radio and television repairman, who testified in English.

He said he was born in China in 1918, came to the United States in '29, returned to China in '33, married there in '34, had a son, Chin Sung Hong, born in 1936. He returned here in 1937, reported the birth of a son. Actually, he died some time before 1950.

In 1951, he went to Sing Kee's office and he told him he had a son and he wanted to bring him into the country. He asked Sing to help him and Sing helped him with the case.

Some weeks later he obtained the papers from Sing, he signed them before a notary public, copies were mailed to the consul in Hong Kong and then a boy using the name of Chin Sung Hong came to the United States in July, 1952. Chin Ming Mow had given Sing Kee $800 for the plane ticket.

Later he received notice from the Immigration Service to take a blood test. He went to Sing Kee, who told him to go Dr. Liu for a blood test. Dr. Liu reported to Sing Kee that the witness had Type A blood. The boy had a blood test at Ellis (1009) Island. The witness went to Sing Kee, who told him the blood test was incompatible. He told Sing Kee that if there was a blood test,

it wasn't his true son. Sing said, "I will try to do some other way to retain the boy here."

He had a blood test at Immigration and another at Dr. Sussman's office, which were also incompatible, and they were going to deport the boy.

Chin Ming Mow returned to Sing Kee, who told him to go to Waterman's office, but before going there, Sing told the witness—this is the testimony of Chin Ming Mow—that he should not tell Waterman about the boy not being a true son. Actually, the boy was not a blood son but only an adopted son. He paid Sing $800 and got back about $200.

On cross-examination, Chin Ming Mow said he believed until the boy came to Ellis Island that the boy was his true son. After he arrived, he learned his true son was killed.

Sing Kee went with him to Waterman's office, where the witness did not tell that the boy was not his blood son. Sing Kee was present when Chin Ming Mow signed the complaint. Sing denies telling (3010) Chin Ming Mow to conceal anything. He says the identity was not known until after suit was brought.

Then there was the case involving Wong Wing, and that was presented under the testimony of George Wong and Chin Way Mon for the Government. George Wong, also known as Wong Doo Hing, testified he was born in Kwantung, China. He and his wife had two children; a boy, Wong Wing, and a girl. He came to the United States, you will remember, at night in 1936 via the Michigan River, when a white man brought him over in a boat. He was never naturalized, never left the United States, and his wife and children never came here.

He had a good friend by the name of Chin Way Mon and with Chin Way Mon he discussed Wong's son, Wong

Wing, just prior to Chin's going to China in 1948. Chin informed him that he had a paper suitable for Wong's son to use to come to the United States. The paper was in the name of Chin Sen Loon.

Then a paper was prepared for the son in the office of Hom Yuen, or Tom Yuen, also known as Harry Dow. The witness George Wong identified the picture of his son and the affidavit here. The other picture was that of Chin Way Mon. George Wong (1011) paid Chin $500 plus some twenty to thirty dollars, and subsequently more, apparently totaling altogether around a thousand dollars. The son did not come here, as the application was denied.

George Wong went in to see Sing Kee in June or July or August, apparently in the summer season of 1952. He brought a paper from the consul's office and told him that the paper belonged to Chin Way Mon and had been denied, and asked Sing Kee if he could help him. Wong testified that Sing said, "I can recommend you a lawyer. * * * You have to take court action." And he told him that his name was Wong Wing.

Sing Kee mentioned Waterman as the attorney and told the witness what the fee would be. George Wong told Sing that he was trying to bring his son in under the name of Chin Sen Loon and that Chin Way Mon, the alleged father, was in Hong Kong. Sing told him someone had to sign the paper and he told Sing that Chin's eldest boy was here. Sing said, "Go to the lawyer's office to sign the paper."

About two weeks later he went to Sing's office when Chin Wah Loon, the son of the father Chin Way Mon, was there. Sing asked if his name (1012) was Chin Wah Loon. He recommended a lawyer and asked to have Chin Wah Loon sign the papers.

Later, after Chin Wah Loon returned to the United States, about April, 1954, Wong paid him $250 plus $30 for filing fees. Wong had met Sing Kee as a member of the draft board. Wong is not a citizen, but in 1940, when registering for the draft, he said that he was a citizen.

Then Chin Way Mon, the alleged father, testified that he was a laundryman, born in China in 1903. He was married in China before coming to the United States in 1922, made three trips back to China. He and his first wife had three sons, including one Chin Seu Loon, and this son, Chin Seu Loon, apparently died before 1946, and Chin Way Mon, the father, never reported the death of this son. He knew George Wong and with Wong Chin discussed this son and Wong said he wanted to bring him to the United States. Apparently his son may have been a godson of Chin Way Mon. There were papers prepared by Hom Yuen, Harry Dow, to bring this boy in.

The witness identified the picture as himself, Chin Way Mon, and "that is Wong Wing," apparently using the name of Chin Seu Loon on the affi- (1013) davit.

Before leaving for Hong Kong in 1948, George Wong gave Chin Way Mon $500. Wong Wing never came to the United States. After the witness returned to the United States from China, Chin Way Mon returned in 1953, he learned of this court action from Wong Doo Hing, and he went to see Waterman about 1955.

As to this case of Wong Wing, the defendant testified that George Wong may have been at his office, that one Henry Young came there in 1952 with someone who looked like George Wong. Sing says he never met Chin Way Mon, the father, but he did meet his son, Chin Wah Loon, in December, 1952, in his office, with one Henry Young, a distant relative of Sing's.

Yeung said, "This is the brother that we talked about that wants a 503 suit started." Sing gave him Waterman's card and sent him down there. Sing says he received no money and paid Waterman none.

Waterman testified with respect to this case that Chin Way Mon's son, Chin Wah Loon, came to see him about this case in December, 1952; that (1914) Chin Wah Loon told him he was a son of Chin Way Mon, that they wanted to bring in his brother, then in Hong Kong, where his father then was. Chin Way Loon brought the affidavits. Waterman conceded that Chin Wah Loon was sent by Sing Kee. An unverified complaint was filed, apparently because there was nobody who could legitimately verify it.

When Chin Way Mon returned in November, 1955, he went in to see Waterman and the case was discontinued. Waterman said he knew nothing was amiss in this case.

Then there was one more case involved in connection with the conspiracy, and I am sorry I am taking so long, but I am trying to cover the testimony completely, and that was the testimony involving Chin Kung Chee, also known as Sum Yuen Quay, in reference to the Sum Nin Oon case.

Here, Chin Kung Chee, also known as Sum Yuen Quay, testified as follows. Chin was born in China in 1898 and, under false papers, came to the United States under the name of Sum Yuen Quay in 1930, falsely claiming as his father Sum Wong Loy. He was married before he came to the United States. He had three children, two boys and one girl. A son (1015) was born after he arrived in the United States, and that was this Chin Nin Oon.

In May of 1952, he wanted to bring Nin Oon into the United States and he went to see Sing Kee to take care of it for him, prepare a paper for his son.

Chin signed an affidavit, he says, before Sing. He says he did not swear to the papers before a notary public. Sing had his certificate of identity. Chin paid Sing $200 for preparing papers, preparing the papers, and said he would pay Sing another $300 after his son came in.

About three months later he returned and the same year he went a third time to see Sing Kee, this time about the identification paper of his son. He told Sing that the identification paper was not right, as it was the Chin family, instead of the Sum family, and Sing said there was nothing he could do about it. The son never came to the United States.

He received a letter from Sing to come to his office. He went and saw him and he told Sing, "I tried to have some way to save my son's papers."

He testified that Sing said he hoped it can be saved. He signed a paper, a complaint, in the lawyer's of- (1016) fice. Later he signed a paper in Sing's office—I believe it is in evidence, on the bottom of the letter—which authorized the discontinuance of the case.

He maintains his bank account as Sum Yuen Quay, did not register for the draft. He told Sing at the time of the preparation of the paper that he had a son whose name was Sum Nin Oon. He wanted to bring his true blood son to the United States. He brought Sing his own and his son's photographs. He never saw the boy, Chin Nin Oon, mentioned as Sum Nin Oon in the affidavit. He received a letter from his son stating that his identification was found out by the authorities, and told this to Sing, who said, "Nothing can be done."

While at Sing's office, however, Sing told a man in his office to go to the lawyer with him and then he signed a paper in the lawyer's office.

In reference to the Sum Nin Oon case, Sing testified as follows: He said he first met Sum Yuen Quay in May or June of 1952, at his office. An affidavit for the admission of one Sum Nin Oon was prepared at his office. Sum Yuen Quay said he wanted to bring his son to the United States. Sing (1017) received a certificate of identity and other written information from Sum Yuen Quay. Sing collected $100 and paid Dow twenty-five to thirty dollars. He had to pay Crean $2 an hour for the affidavits.

Sing gave the affidavits either to Dow or Booth. In the latter part of 1953, Sum Yuen Quay told him that somebody went over his affidavits. Sing says, "I can't do anything further for you." He told Sum, "If you want to file, file 503," that it was his only possible way to appeal. He says he did not know that he, Sum, was a Chin. This was in 1952.

Mr. Stim asked, "Until 1952, did you know that he was a Chin?" And Sing said, "No."

He sent Sum to Waterman. Sum never paid Sing anything. The only pay Sing expected was if he went to court as an interpreter.

Waterman testified that Sum Yuen Quay, with either Albert Kee or Wilbur Chung, came to his office on December 22, 1952, and Sum gave him an affidavit with photographs and a complaint was prepared and signed. Waterman wrote to the complainant to come in, but he did not. He asked Sing to locate Sum, and he received a consent to discontinue from (1018) Sing, but signed by Sum. The case was discontinued.

There was other testimony adduced by the Government, that of Booth, Hom, Dow, Treglia, Dr. Sussman and Dr. Liu, physicians.

Booth testified that he had done work for Sing since 1927 or '28, and in 1949 he handled seventy-five to 100

cases referred to him by Sing and received $25 to $30 for each, and these checks were drawn to him by Sing Kee on the China Overseas Travel Agency.

Dow testified that he was a member of the bar in Massachusetts, admitted to practice in the Immigration Service, where he was formerly an interpreter, and in the years 1950 to 1952, Sing Kee referred to him seventy-five to 100 immigration cases, for which he received usually $25 each.

Treglia, notary public, testified he notarized papers either at Sing Kee's office or his office. The papers were brought by someone from Sing Kee's office, in which event the person signing the papers sometimes, at least, he conceded, did not appear before him. In some cases he went to Sing Kee's office where he apparently testified that in certain instances the papers were personally sworn to and in other cases they were not.

(1019) Dr. Sussman testified that he was a specialist in hematology and serology and made blood tests of Chinese. He explained the groupings and the method of exclusion. In the period of June, 1952 to March 12, 1956, he made seventy-three blood tests at the request of Dr. Liu; between September 8, 1953 and January 3, 1956, he made sixteen tests at the request of Sing Kee.

Dr. Arthur Liu testified that he had been a physician for twenty years but was not a serologist or hematologist, and although he had performed tests since 1922 in cases of disputed parentage, he does not perform all the tests but refers certain cases to Dr. Sussman. He has known Sing Kee for fifteen years as a patient and as family physician.

In 1952, he, Sing Kee, sent him about thirty cases; some came with Sing's brother Albert and some came with this Wilbur Chung of his office, all in Chinese.

He testified he examined blood of Jew Ing Gim, August 11, 1952; Chin Ming Mow, July 30th and August 26, 1952, at Sing Kee's request, and on July 30, 1952, I believe, he tested Chin Seu Hong at Ellis Island, also at Sing Kee's request.

(1020) Then the defendant presented a number of witnesses who testified as to Sing Kee's reputation for honesty, stating his honesty, truth telling and integrity were good. These witnesses were Judge Wahl, Paul Akst, a colonel; David DeVoto, a retired policeman; Paul Chang, a Lutheran pastor; Mary Banta, a missionary; Leon Michelini, a trucking executive; Dr. Francis K. Shepard, a Baptist pastor; Joseph O'Connell, and others.

Waterman testified generally that Sing Kee sent him immigration cases, including the Jew Ing Gim case, the Chin Way Mon case, the Sum Yuen Quay case, and the Moy Mon Sing case, sent him in 1952 fifty cases. Most of the time, as he testified, he received his money through Sing Kee.

When asked certain questions before the grand jury about his books, he denied knowing any irregularities.

On cross-examination, Sing Kee testified in part, as follows:

"Some of the affidavits were prepared on his typewriter by Cream, but were checked by Dow. Some 130 affidavits were either prepared or checked for Sing by Dow in the period between 1949 and 1952. (1021) and payments to Dow were on a cash payment basis.

Sing sent persons to the doctors for blood tests. He sent persons to Waterman, usually collected the retainers, put the money in an envelope and gave it to Waterman and said he transmitted all and kept nothing. He kept

the records of sales of tickets only. He said he recorded his service receipts on his diary; all were grouped and then the legal expenses deducted.

Crean, he said, was a stenographer with the Immigration Service for about thirty years. Sing said he had been a member of On Leong Tong, a Chinese merchants' association, for over thirty years, was a secretary up to 1939, and, I believe now, is a representative or director. Dong became a member about February, 1952, but Sing did not know it until 1953.

He does not recall Ng Yee Pon being present at the first time Dong or Ng Ming On came. He assisted Dong, as well as Ng Yee Chor, this person who came in as Ng Quock Keung, in getting certificates of citizenship. I believe he conceded some sixty admissions of children under the derivative citizenship in this period of two years, a little (1022) over $100 average.

In his 1951 income tax return, Sing reported $6,127 received as commissions from tickets, and $13,393 for services. He paid out $1,300 for legal services to Booth, leaving about $12,000 for services. Some of this is for services which he said were not related to immigration, and he had reference to interpreter's fees. This would take out about $2,000 to $3,000.

In his 1952 income tax return, Sing showed commissions of $4,363, $12,500 services; legal fees paid out, $1,605, leaving net for services about $11,000, of which $2500 was, as he testified, for interpreter's fees.

He testified he had never seen a halfgoon or coaching paper in his office. Until about thirteen years ago, laymen could practice before the Immigration Service. He said he was recognized as a representative prior to World War II.

Over fifty 503 actions were successful, most of them put off the calendar, and then he collected on some. He looked up a lot of people. He sent Albert Kee or Wilbur Chung to interpret. He said he was never paid for these services.

(1023) After Sum came to him in 1953 and told him it was discovered that he was a Chin, he did not tell this fact to Waterman and it was over two years and five or six months before Sum signed the consent at his office for the discontinuance of the case.

Sing denied that Dong was referred to as "Dong," denied the lack of oath by all the other affiants, and he denied all other involvements in the Ng Quock Keung case; likewise, in the Jew Sun Ai case, the Chin Way Mon case, Sum Yuen Quay case, and the Moy Mon Sing case, and so on.

Albert Kee, his brother, has had a dry cleaning establishment since at least 1950, but came to Sing's each day and worked.

Wilbur Chung owned a print shop for several years, the Asia Press, on 1st Street, but came into the office two or three times a week and on Sunday. Sing paid neither anything.

Sing, while with the Government, interpreted at hearings. He denies all wrongdoing.

So much for the summary of the facts in this case, which has taken a long time.

In your determination of the facts, you rely upon your own recollection of the evidence. What I (1024) have said from time to time, what I may say in this charge, or counsel may have said during the course of the trial or during their summations is not to be taken by you in place of your own recollection of the facts or the evidence in this case.

Nor are you to take into account or consider in any respect rulings made on any motions or objections by counsel. These related solely to matters of law with which you have no concern. With respect to those questions as to which objections were, in fact, sustained, you are to draw no inferences of any kind.

As I have previously stated, you are the sole and only judges of the credibility of each and every witness, as you are of the facts.

How do you determine and appraise the credibility of witnesses? In your search for the truth, you may, and you should, use plain, ordinary common sense. When you walk into this courtroom or when you enter this jury box, you do not leave your common sense at the door. It is with you throughout.

You have heard the witnesses on the stand and heard the manner in which they testified. How did they impress you? Did the witness appear to be (1625) testifying frankly, candidly and fairly? What degree of credit you should give a witness' testimony may be determined by his conduct and his manner of testifying and his relationship or interest in the outcome of the controversy.

In other words, in applying the test as to the credibility of the witnesses, again you apply your own common sense and your everyday experience and act exactly as you would in your own affairs when called upon to make important decisions.

You may take into account the interest of a witness, but an interested witness is not necessarily unworthy of belief. It is a factor that you may consider in determining the weight and the credibility to be given to his testimony, just as you may take into consideration any factor which appeals to you in aiding you to decide

whether or not anyone is telling the truth. To use the vernacular, you really size up the witness.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief, as appeals to your reason or judgment. Remember always it is the quality of the evidence that (1026) counts.

The defendant, Sing Kee, has taken the witness stand to testify in his own behalf. He was under no obligation to do so, but a defendant may testify if he so chooses.

By testifying in this case, Sing Kee became a witness whose credibility is for you to judge, along with the credibility of all the other witnesses.

It is proper to note that the deep personal interest which every defendant has in the result of the action against him should be considered by the jury in weighing his innocence and determining how far and to what extent it is worthy of belief. Certain witnesses took the stand on behalf of the defendant and testified with respect to his character and reputation.

Character evidence is relevant to the question of innocence or because it might persuade the jury that a person whose character is thus attested would not have conducted himself as alleged in the indictment. Character evidence of itself may be sufficient to raise a reasonable doubt of guilt where such doubt, on the basis of the other evidence, would not exist.

(1027) Thus, you must consider character evidence in connection with all the other evidence in the case. If, after weighing all the evidence, you are convinced of the defendant's guilt beyond a reasonable doubt on any or all of the counts in the indictment, your duty will be to return a verdict of guilty on such count or counts, notwithstanding the testimony that the defendant was or is a person of good character.

If, however, on the basis of all the evidence, you are not convinced of the guilt of the defendant beyond a reasonable doubt with respect to any or all of the counts, you will return a verdict of not guilty on such count or counts.

The character evidence alone, if you so evaluate it, may be sufficient to raise a reasonable doubt.

The credibility of a witness is solely for you, the jury, to decide. Subject the testimony to the same scrutiny as you would subject any important conversation or act. The mere fact that a witness was called by the Government or is in the Government employ does not entitle such witness' testimony to more weight or credence than that of any other witness.

(1028) The rule in the Federal Court is that a defendant may be convicted on the uncorroborated testimony of an accomplice or informer. Certain witnesses who testified for the Government were named in the indictment as co-conspirators. By reason of the participation in the alleged criminal scheme, they did not become incompetent as witnesses and their testimony may be considered by you together with all the other evidence in the case.

However, the testimony of an accomplice or an informer should be scrutinized by you with the greatest care and caution. It is not to be rejected, however, unless you come to the conclusion that it is not to be believed. After carefully scrutinizing such testimony, you have a right to believe all of it or any part of it, and you also have a right to disbelieve all of it or any part of it.

During the course of this trial you have heard mentioned such terms as "cross-examination, impeachment and credibility." I should like at this time to comment on these terms.

You have observed during this trial, after a witness had testified on direct examination, for the party who

called him, that he was turned over to (1029) counsel for the adverse party to be cross-examined. The fundamental purpose of cross-examination is to elicit suppressed or undeveloped facts, if any, relating to the matters covered during the direct examination.

However, cross-examination may extend to collateral matters which do not relate either to the facts in issue or to relevant facts when its object is to diminish the personal trustworthiness or credit of the witness. This is known as impeaching the credibility of a witness.

Nevertheless, as I have said, you are the sole judges of the credibility of each and every witness. You may accept so much of the witness' testimony as you believe and reject that which you do not believe, or you may reject the whole of the witness' testimony.

In discussing the testimony, I have attempted, of course, to adhere to the record. If, perchance, any reference I have made to testimony in the case does not coincide with your own recollection of the facts, you will have no hesitancy in disregarding such reference and relying upon your own recollection. No statement by me is intended (1030) in any single respect to influence your judgment.

You came into this jury box at the commencement of this case, without any preconceived views, ideas or opinions concerning the guilt or innocence of the defendant, and what you know about the case you have learned only from the testimony of the witnesses and from the exhibits admitted into evidence. Your final determination of the facts must be based upon that evidence.

Each of you is entitled to his own opinion but you are expected to exchange views with your fellow jurors. That, of course, is the very purpose of jury deliberation—to discuss and consider the evidence and to listen to the arguments and reasons of your fellow jurors, to present

your own individual points of view and reach an agreement, if you can, solely and only on the evidence, if you can do so without violence to your own individual judgment.

You are not to yield, however, for example, simply because you are outnumbered or outweighed. You vote with the others only if you are convinced on the evidence and the law that it is the correct way to decide the case. On the other hand, you should not hesitate, if you are convinced by a fellow (1031) juror, to change your point of view if it appears to be erroneous to you.

You will return a verdict of either guilty or not guilty separately on each of the four counts in the indictment. To return a verdict, it must be unanimous.

You may have the indictment and any documents which are in evidence to take with you into the jury room for consideration during your deliberations.

I have already instructed you, and I repeat, that the indictment is not evidence of any of the allegations contained therein. It is only a charge or a complaint. It does not figure in any way in your deliberations.

You may, if you so desire, request that the court reporter read any portion of the testimony in the case.

With that, the Court submits this case to you with full confidence that you will each live up to your oath of office.

If there are any exceptions not heretofore made, I will take the same in chambers.

Mr. Stim: Your Honor, I have no exceptions, (1032) except that I respectfully ask the court to charge this. You did charge——

The Court: You want this mentioned in open court?

Mr. Stim: This is a very simple thing.

The Court: I would prefer to have it in chambers.

Discussion
Verdict

(The following discussion took place in chambers, out of the hearing of the jury:)

Mr. Stim: Your Honor stated in your main charge that if they find there are a lot of non-related conspiracies which relate to false affidavits, then they must find that the conspiracy charged in the indictment has not been proved. I only ask you to charge one thing, that you must find them then not guilty under the conspiracy.

The Court: I think I have, already.

Mr. Stim: All right.

I want to congratulate you, Judge. That is as fair a charge as I have ever heard.

(The following occurred in open court, in the presence of the jury:)

The Court: I want now to dismiss the two alternate jurors. You may step out of the box. You (1033) are now excused. Thank you very much for your patient attendance.

(Two alternate jurors excused.)

(Marshals sworn.)

(All exhibits submitted to the jury. The jury retires for deliberation at 4:05 p.m.)

(At 5:35 p.m., the jury returned to the jury box.)

(Roll call.)

The Clerk: Mr. Foreman, has the jury reached a verdict?

The Foreman: Yes, we have.

The Clerk: How say you?

The Foreman: We find the defendant guilty on all counts.

The Clerk: Members of the jury, listen to your verdict. You say you find the defendant guilty on all four counts of the indictment, and so say all of you?

(Jury nods assent.)

The Court: You are excused now with the thanks of the Court for listening and for determining this case.

Mr. A. Stim: Your Honor, at this time I would (1034) like the jury polled as to each count.

The Court: As to each count separately?

Mr. A. Stim: Yes.

The Clerk: Members of the jury, you say you find the defendant guilty on Count No. 1, Count No. 2, Count No. 3 and——

The Court: He wants them polled separately on each count.

The Clerk: Members of the jury, you say you find the defendant guilty on Count 1?

(Jury polled.)

The Clerk: You say you find the defendant guilty on Count No. 2 of the indictment?

(Jury polled.)

The Clerk: Members of the jury, you say you find the defendant guilty on the third count of the indictment?

(Jury polled.)

The Clerk: Members of the jury, you say you find the defendant guilty on the fourth count of the indictment?

(Jury polled.)

* * * * *

(1035) Mr. A. Stim: In that event, I would like to make a motion to set aside the verdict on all of the counts of the indictment in that the verdict was against the weight of the evidence, in that the guilt of the defendant was not proven as to Count 1, the conspiracy count, and Counts 2, 3 and 4, beyond a reasonable doubt, as a matter of law.

The Court: Motion is denied.

Mr. A. Stim: I take exception to that, your (1036) Honor, and I make a motion on the same grounds for a new trial.

The Court: Motion is denied.

Mr. A. Stim: At this time, your Honor, I would like to make a motion to continue the bail of the defendant pending sentencing.

The Court: Bail is five thousand?

Mr. Goettel: That is right, your Honor. I have no objection.

The Court: Motion is granted and the defendant will be continued on $5,000 bail until the time of sentence.

The sentence is set down for March 5th at ten a.m., and I believe I will be in Room 128, the calendar portion, civil calendar, Room 128, and I ask to have a pre-sentence report from the Probation Department made available to me.

(Adjourned to March 5, 1957, 10:00 a.m.)

* * * * *

JAN 2 1958
JOHN T. ... Y, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 699

SING KEE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
Questions Presented for Review	3
Statutory Provisions in Point	5
Concise Statement of the Case	9
Glossary of Witnesses	9
The Government's Witnesses	10
The Attorneys—Witnesses for the Government	22
The Defense Witnesses	24
The Petitioner-Defendant's Testimony	30
Character Witnesses	36
Basis of Federal Jurisdiction in the Court of First Instance	36

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI:

POINT I.—Prejudicial error was committed by the Trial Court in permitting the Government to elicit from the witness Samuel B. Waterman testimony that he had invoked the Fifth Amendment at a grand jury hearing as to matters that he testified to at the trial herein 36

PAGE

POINT II.—The Government used improperly obtained matter to use in cross-examination of the Petitioner, in violation of his rights under the federal laws 50

CONCLUSION 52

EXHIBIT A 53

EXHIBIT B 65

CASES CITED

Bolich v. United States of America, 352 U. S. 866, 1 L. Ed. 2nd 74 (No. 186) 4

Grunewald v. United States, 353 U. S. 391, 1 L. Ed. 2nd 931 ..... 4, 45, 47, 48, 49

Travis v. United States, 247 F. 2d 130 47

United States v. Tomaiolo, 248 Fed. 2d ...., No. 24569, 2nd Circuit, Filed November 21, 1957 49

STATUTES CITED

18 U. S. C. A. Sections 2, 1542, 3238 8
Title 18, United States Code, §371 5
Title 18, United States Code, §2 5
Title 18, United States Code, §1542 6
Title 18, United States Code, §3238 6
Title 26, United States Code, §55 ..... 6, 50
Federal Tax Regulations (1954) §458.204 ..... 8, 51

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. .....

SING KEE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Supreme Court of the United States:

Sing Kee, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on the 5th day of December, 1957.

Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit is reported in 248 Fed. 2d. ..... A copy of this opinion is hereto annexed and marked Exhibit "A" hereof.

Jurisdiction

The judgment of affirmance of the United States Court of Appeals for the Second Circuit, which is sought to be reviewed herein, was made and entered on the 5th day of December, 1957.

No motion for an order requesting a rehearing was made to the United States Court of Appeals for the Second Circuit, nor was any application made for an order extending the time within which to petition for a writ of certiorari.

The jurisdiction of this Court is invoked under Rule 19 of the Supreme Court Rules and Title 28 U. S. C., Section 1254 (1), on the ground that review by the Supreme Court by writ of certiorari is sought of a judgment of affirmance on appeal by the United States Court of Appeals for the Second Circuit.

Certiorari is sought on the grounds, that the United States Court of Appeals for the Second Circuit has rendered a decision on an important question of Federal law in a way in conflict with an applicable decision of this Court; has decided an important question of Federal law which should be clarified and made more definite and certain by this Court; has rendered a decision in conflict with the decision of another Court of Appeals on the same subject; and has departed from the acceptable and usual course of judicial proceedings and has sanctioned such a departure by a lower court so as to call for an exercise of this Court's power of supervision.

Questions Presented for Review

The Petitioner Sing Kee was convicted in the United States District Court for the Southern District of New York for conspiracy to violate the Immigration Laws, 18 U. S. C. A., Sections 371, 1425 and 1542 and 8 U. S. C. A., Section 1342 and on three substantive counts for making false statements in passport applications in violation of 18 U. S. C. A. Sections 2, 1542 and 3238.* A copy of the indictment upon which Petitioner was tried is hereto annexed and marked "Exhibit "B" hereof.

The judgment of conviction of the United States District Court for the Southern District of New York was based upon a verdict of guilty by a jury and was dated and entered the 5th day of March, 1957. Under said judgment of conviction, the Petitioner was sentenced to imprisonment for a period of two and one-half years each on counts 1, 2, 3, and 4 of the indictment, the counts upon which he was convicted, said sentences to run concurrently with each other and in addition Petitioner was fined $1500 on each of counts 1, 2, 3, 4, the total fines amounting to $6,000, to be paid, or if Petitioner stands to be committed until otherwise discharged according to law. Petitioner was continued on bail in the sum of $10,000.00 pending appeal. Petitioner is still free on said bail.

The questions presented for review with regard to the trial of the aforementioned indictment are as follows:

1. Whether the Trial Court committed prejudicial error in permitting the Government to elicit from the wit-

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* At the conclusion of Government's case the Trial Court on motion of defense counsel dismissed count 5 of the indictment, which charged the substantive crime of making false statements in passport applications in violation of 18 U. S. C. A., Sections 2, 1542 and 3238.

ness Samuel B. Waterman upon his cross examination, the fact that he had invoked the Fifth Amendment at a Grand Jury hearing as to matters that he testified to at the trial herein;

2. Whether the circumstances of the cross examination of the witness Samuel B. Waterman as to his having invoked the Fifth Amendment at a Grand Jury hearing as to matters that he testified to fully at the trial herein disregards and denies effect to this Court's views against cross examination of a witness as to his invocation of said constitutional privilege, as expressed by this Court in *Grunewald* v. *United States*, 353 U. S. 391, 1 L. Ed. 2nd 931;

3. Whether the circumstances of the cross examination of the witness Samuel B. Waterman as to his having invoked the Fifth Amendment at a Grand Jury hearing as to matters that he testified to at the trial herein, raises an identical question to that raised in *Bolich* v. *United States of America*, wherein this Court granted certiorari in 352 U. S. 866, 1 L. Ed. 2nd 74 (No. 186), as to the following question:

> "6. Whether the Trial Court committed prejudicial error in permitting the Government to elicit from the defendant Halperin upon his cross-examination, that he had invoked the Fifth Amendment at a Grand Jury hearing and that the Trial Court charged the jury that they might consider Halperin's claim of constitutional privilege as adversely affecting his credibility,"

which question was not answered by this Court when it rendered its decision, 353 U. S. 391, 1 L. Ed. 2nd 931, and which question is still a novel and open one before this Court;

4. Whether the rights of the Petitioner were violated by the Trial Court in permitting the Petitioner to be cross examined, over objection, from copies of Petitioner's Federal tax returns obtained by the Government from the Bureau of Internal Revenue, and for the possession and use of which, the Assistant United States Attorney failed to present evidence of legal authorization as required by the Federal Statutes and Federal Tax Regulations.

Statutory Provisions in Point

Title 18, United States Code.

"§371. *Conspiracy to commit offense or to defraud United States*

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1946, c. 645, 62 Stat. 701."

"§2. *Principals*

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would

be an offense against the United States, is punishable as a principal. As amended Oct. 31, 1951, c. 655, §17b, 65 Stat. 717."

"§1542. *False statement in application and use of passport*

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason or any false statement—Shall be fined not more than $2,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 771."

"§3238. *Offenses not committed in any district*

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought. June 25, 1948, c. 645, 62 Stat. 826."

Title 26, United States Code.

"§55. *Publicity of returns*

(a) *Public record and inspection*

(1) Returns made under this chapter upon which the tax has been determined by the Commissioner shall constitute public records; but, except as here-

inafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

(2) And all returns made under this chapter, subchapters A, B, D, and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such persons under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy." * * *

(f) *Penalties for disclosing information*

(1) *Federal employees and other persons.* It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by

law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment." * * *

FEDERAL TAX REGULATIONS (1954)

"§ 458.204. *Use of returns in litigation.*

The return of an individual, partnership, corporation, or fiduciary, or a copy thereof, may be furnished to a United States attorney for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation; or to an attorney of the Department of Justice, for like use, upon written request of the Attorney General, the Assistant to the Attorney General, or an Assistant Attorney General. If a return or copy is thus furnished, *it shall be limited in use to the purpose for which it is furnished* and is under no condition to be made public except to the extent that publicity necessarily results from such use. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States Government is not interested in the result, but this provi-

sion is not a limitation on the use of copies of returns by the persons entitled thereto." (Emphasis supplied.)

Concise Statement of the Case

Glossary of Witnesses*

Dong Soon Chor	*Ng Mong On*	(R. 3)
Ng Yee Chor	*Ng Quock Keung*	(R. 131)
Ng Gim Ting	*Ng Yee Pon*	(R. 212)
Ng Jock Nuey	*Jew Sun Ai*	(R. 222)
Hom Ing Gim	*Jew Ing Gim*	(R. 301)
George Wong	*Wong Doo Hing*	(R. 406)
Harry Dow	*Hom Yuen*	(R. 411)
Chin Way Mon		(R. 452)
Chin Ming Mow		(R. 468)
Chin Kung Chee	*Sum Yuen Quay*	(R. 518)
Chin Nin Oon	*Sum Nin Goon*	(R. 547)
Moy Mun Sing		(R. 563)

* Because the various Chinese witnesses in this case are known by multiple names, i.e., birth name, marriage name and immigration name, which are not in the true sense aliases but multiple bona fide names, the name used by the United States Attorney is first set forth in this glossary and thereafter in italics along side appear the other name or names that the same witness is also known by. For the purpose of clarity, petitioner shall refer to various named witnesses under the name that the witness was first identified by the United States Attorney. It must be borne in mind, however, that throughout the testimony of this trial, the various names of each particular witness were used interchangeably throughout in the testimony of both Government and defense witnesses.

The Government's Witnesses

Dong Soon Chon, the first witness, testified that in the year 1934, six months prior to the reported birth of Ng Quock Keung, his alleged "paper son"* in China, he reported to the U. S. Immigration officials that his wife was then pregnant (R. 108).** In the year 1936 Dong reported the birth of said "son" to the U. S. Immigration authorities. That information was not true and was reported merely to provide Dong with an opportunity to obtain official documentation of the existence of such a "son".

Dong testified that in the beginning of the year 1950, he spoke to one, Woo Lim Gee and that as a result of that conversation he met one Ng Gim Ting (R. 21); that Dong, his wife, Ng Gim Ting and Woo Lim Gee had a conversation at the Pagoda Restaurant on Mott Street in New York City concerning a suggested sale by Dong to Ng Gim Ting of the Ng Quock Keung "slot".† It was

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* The term "paper son" as hereinafter appears relates to a fictitious child or children of an American citizen allegedly born in China, whose citizenship and eligibility to enter into the United States are derivative through the American citizenship of his father. It appears to have been a wide-spread practice of many Chinese on periodic visits to the Chinese homeland where their wives resided, to report the birth of fictitious sons to the U. S. Immigration officials and thus to create official documentation of the existence in China of a son of an American citizen bearing a certain name.

** Page references preceded by the letter "R" refer to the record of proceedings filed in the United States District Court for the Southern District of New York, which record is being forwarded to this Court upon this petition for a Writ of Certiorari. Page references followed by the letter "a" refer to petitioner's Appendix on Appeal to the United States Court of Appeals for the Second Circuit, which is likewise being forwarded to this Court upon this petition.

† The term "slot" designates paper documents as to the existence of an alleged "paper son" in China. The use of the slot was often sold by a fictitious father to a person seeking to bring a relative over from China on the fictitious identity of the "paper son", whose slot was sold.

agreed that this "slot" would be sold to Ng Gim Ting for the sum of $1800 (R. 28); that Dong, his wife and Ng Gim Ting went to Petitioner's house on Mott Street and that Dong asked Petitioner to prepare the necessary papers and bring the boy over (R. 32); that Dong made three visits to Petitioner's house; that on the occasion of the second visit, Dong gave Petitioner his family history (R. 39) and on the third visit, which was several months later, Petitioner gave Dong an affidavit to sign. This affidavit and an affidavit signed by Dong's wife are among the papers which were admitted in evidence as Government's Exhibit "1", and are the affidavits and papers submitted in support of the application in the name of Ng Quock Keung for a passport (R. 45).

Dong further testified that he first saw the boy, whose photograph appears on Government's Exhibit "1" as that of Ng Quock Keung in the year 1951 when the boy was admitted to the United States; that he saw him at the time that he and his wife appeared at the Immigration office to give testimony for admission of the boy as their son (R. 62); that after the boy was admitted to the United States, the boy lived with Dong several days and then went to live in New Jersey with his uncle, Ng Gim Ting (R. 65). Government's Exhibit "2" in evidence (R. 83) and Government's Exhibit "3" in evidence (R. 87) are various documents which Dong testified that he signed in the Petitioner's office, after the boy was admitted and were prepared in support of an application to obtain a certificate of citizenship for the boy. It was further brought out on examination of Dong, that Dong received and kept the $1800 that he was paid by Ng Gim Ting for sale of the "slot" (R. 127).

Ng Yee Chor was the second witness on behalf of the Government. This witness was the boy brought to the

United States on the Ng Quock Keung "slot". Ng Yee Chor testified that he was born in China (R. 131); that he knows Ng Gim Ting whom he once saw in China (R. 132); that while Ng Yee Chor lived in Hong Kong prior to coming to the United States, he was supported by Ng Gim Ting (R. 135) and while in Hong Kong he received family coaching papers mailed to him by Ng Gim Ting. This witness stated that during the month of March, 1951, he came to the United States under the name of Ng Quock Keung (R. 133) and that after coming to the United States he lived with Dong and his wife for a few days and then went to New Jersey to live with his uncle.

Ng Gim Ting testified that he returned to the United States from a visit to China in the year 1947 (R. 146) and that about the beginning of the year 1950 he had a conversation with a Mr. Woo at the Chinese Community School in China Town, in New York City concerning Ng Yee Chor (R. 147), a boy that he had heard of when he was in China (R. 143). In this conversation Mr. Woo stated that he knew somebody who had a "slot" for sale (R. 149), and that Woo would put that person in contact with Ng Gim Ting (R. 155). On a Sunday Ng Gim Ting met Dong, Dong's wife and Mr. Woo at the Chinese Community School where Woo introduced the witness to the other parties (R. 158). Dong, at that time, told Ng Gim Ting that he had a "slot" for sale for $1800. Ng Gim Ting testified that he agreed to buy the slot for this price and he, Dong, and Dong's wife then went to the Petitioner's office to have the necessary papers prepared to bring the boy over; the witness testified that the Petitioner told him that his charge would be $400 for preparing the papers and that he paid this sum on his third visit (R. 169, 174). The witness, on being shown Government's Exhibit "1" in evidence identified the photograph of the

boy represented thereon as being Ng Quock Keung as being in reality that of Ng Yee Chor, a cousin of the witness. In addition to paying Dong $1800 for the "slot", Ng Gim Ting paid for the boy's plane fare to the United States, which fare cost $900 (R. 175, 269) and sent $200 to the boy for his support in Hong Kong where the boy lived at the time (R. 289).

Ng Gim Ting also testified as to the second boy whom he attempted to bring to the United States, one Ng Jock Nuey. He stated that while on his visit to Toishan City in China in the year 1947, the parents of Ng Jock Nuey spoke to him about the boy (R. 178); that the boy, Ng Jock Nuey, was a cousin of his; that after his return to the United States and some time in either November or December 1949, Ng Gim Ting spoke to one Hom Gim, an old acquaintance, about his buying a "slot" from the said Hom Gim (R. 182); that Hom Gim had for sale a "slot" under the name of Jew Sun Ai, which paper the witness desired to purchase in order to bring his cousin Ng Jock Nuey to the United States. The price for the Jew Sun Ai slot was $1000 and Ng Gim Ting agreed to pay this sum. Two days later after that conversation, Ng Gim Ting, together with Hom Gim, when to Petitioner's place of business and requested Petitioner to prepare the necessary papers to bring the boys to the United States; that the Petitioner charged for his services in preparing these papers the sum of $200 (R. 183); that Ng Gim Ting paid Petitioner $400 on his third visit to Petitioner's place of business (R. 194).

Government's Exhibit "4" in evidence contains affidavits and papers submitted in support of the application under the name of Jew Sun Ai for a passport (R. 185). The witness on his third visit to Petitioner's office was given the papers identified as being part of Government's

Exhibit "4". At the same time the witness was given a family coaching book. This family coaching book (R. 187), was later admitted in evidence as Government's Exhibit 5 (R. 266). The witness further testified that he sent Government's Exhibit "5", the coaching book, to Hong Kong to Ng Jock Nuey and that he had likewise mailed to Ng Jock Nuey Government's Exhibit "4" (R. 193); that all of the papers mailed by this witness to Ng Jock Nuey and Ng Yee Chor in Hong Kong were mailed to the Sing Wo Tong store owned by one Ng Sim Yee (R. 193, 199, 235), who apparently was this witness' contact in Hong Kong. The witness further testified that he sent $200 apiece to Hong Kong to pay for the expenses of Ng Jock Nuey and Ng Yee Chor while they were in Hong Kong (R. 219). However, Ng Jock Nuey was never admitted to the United States and the witness never paid Hom Gim the agreed sum of $1000 in view of the fact that the boy was never brought over (R. 254). When Ng Jock Nuey's application for admission to the United States was denied, the witness instructed the Petitioner to take steps to appeal the matter (R. 200). Government's Exhibit "6" in evidence, is the original of a civil complaint brought by Hom Ing Gim under the name of Jew Ing Gim against the Secretary of State to have the boy Ng Jock Nuey under the name of Jew Sun Ai declared a citizen (R. 201).

Hom Ing Gim testified that he originally was admitted to the United States in the year 1923 and that he returned to China in 1930 at which time he married and that he reported to the United States Immigration authorities that he had three children whereas in truth and fact, he only had two children (R. 302). The non-existent "paper son" reported by this witness was under the name of Jew Sun Ai. This witness testified that he had known the preceding witness Ng Gim Ting, having traveled on the same boat to China with him in 1947 (R. 304) and that he had

also worked for him in the United States (R. 305). Hom Ing Gim further testified that he had a conversation with Ng Gim Ting in the year 1949 wherein he agreed to sell the Jew Sun Ai "slot" to Ng Gim Ting for the sum of $1000 (R. 306, 307). He and Ng Gim Ting went to the Petitioner's place of business several days later and he gave family coaching books to a Chinese man in Petitioner's office, whom the witness described as the Petitioner's partner; that the second time that he went to the Petitioner's office, which was two weeks after the first visit, he signed certain affidavits, which papers appear in Government's Exhibit "4" in evidence (R. 312), and that on the third visit to the Petitioner's office, some two or three months after the second visit, he received two sets of the coaching books, which he previously gave to Petitioner's "partner". This witness further testified that Government's Exhibit "5" in evidence was one of the coaching books that he received at Petitioner's office on his third visit there (R. 317). He visited the Petitioner's office a fourth time, two weeks after the previous visit, at which time they discussed the Jew Sun Ai application and the fact that it was denied (R. 318). Hom Ing Gim further testified that he had heard originally of the denial from Ng Gim Ting (R. 350) and that he then went to the Petitioner. The witness identified Government's Exhibit "6" in evidence as a paper signed by him at a lawyer's office on Broadway in a proceeding brought to have the boy attempting to come in under the Jew Sun Ai "slot" declared an American citizen (R. 319).

George Wong testified that he was married in China and was smuggled into the United States via the Canadian border in the year 1936 (R. 407); that he discussed bringing his son to America with a friend, one Chin Way Mon, prior to Chin Way Mon's visit to China in 1948. In this conversation, which took place before the commencement

of the conspiracy charged in the indictment, and which was admitted over objection and subject to connection (R. 410), Chin Way Mon told the witness that he had a "slot" suitable for the witness's son. This "slot" was in the name of Chin Seu Loon (R. 411). Wong testified that the legal papers for the admission of his son to the United States under the name of Chin Seu Loon were prepared at the office of Harry Dow, an attorney, in 1948 (R. 411). The papers submitted in support of the passport application of Wong's son in the name of Chin Seu Loon were admitted in evidence as Government's Exhibit "9" (R. 416-417). The witness further testified that he was to pay Chin Way Mon compensation for the Chin Seu Loon "slot" after the boy was admitted to the United States (R. 435) and that the $500 that he gave Chin Way Mon before Chin Way Mon went to China were for transportation and expenses to bring the boy over (R. 434); that in all he gave Chin Way Mon approximately $1,000 (R. 416, 417, 434) which was merely to cover expenses and not for the "slot" that had been sold. Wong further testified that his son never was admitted to the United States and that Wong met the Petitioner for the first time in the summer of 1952 (R. 438) after Wong had been informed that his son's application had been denied (R. 420-421); that at that time he asked the Petitioner if the Petitioner could help to have his son admitted to the United States notwithstanding the fact that the pastport application had been denied; that the Petitioner told him that a Court action would be necessary and recommended the services of the attorney Waterman (R. 424); that he told the Petitioner that he was trying to bring his son into the United States under the name of Chin Seu Loon and that Chin Way Mon's oldest son would sign the Court papers necessary to commence the action (R. 428). Government's Exhibit "10" in evidence consists of the complaint in the ac-

tion entitled, "Chin Way Mon as father and next-of-kin of Chin Seu Loon, against the Secretary of State, for declaration of the son's citizenship" (R. 431). Wong further testified that he never personally paid the lawyer any money (R. 431), but that when Chin Way Mon returned from China in April 1954, Wong gave Chin Way Mon $250 to pay the lawyer and $30 to pay Court costs (R. 432).

CHIN WAY MON testified that he was born in China (R. 452); that he was married in China and came to the United States in 1922; that he returned to China three times and that by his first wife, now deceased, he had three sons (R. 453); that one of these sons was named Chin Seu Loon, who was killed in the China-Japanese War (R. 454); that although he reported the births of his sons to the U. S. Immigration Service, he never reported to it the death of his son Chin Seu Loon (R. 458); that he knew one George Wong (R. 455-456) and that he spoke to Wong about Wong's son to whom he referred to as his Chin Way Mon's god-son (R. 457); that George Wong wanted to bring his son to the United States (R. 457) and that he, Chin Way Mon, agreed to help bring the boy in on the "slot" of his deceased son Chin Seu Loon, it being understood that whatever expenses accrued in bringing the boy over, George Wong was to pay (R. 460). Chin Way Mon identified the photograph on Government's Exhibit "9" in evidence represented in said exhibit as a photograph of Chin Seu Loon, as really being that of Wong Wing, the son of George Wong (R. 461). The witness further testified that this photograph had been sent to him originally from China by Wong Wing (R. 462). Chin Way Mon further testified that when he visited Hong Kong in 1948, George Wong gave him $500 and that upon his return from China, he borrowed more money from Wong (R. 465). Although the witness denied ever having heard the name of

the attorney Samuel B. Waterman (R. 465), he stated that he visited Waterman's office one time in 1955, because Waterman had sent a letter to him, in care of his son. The boy Wong Wing was never admitted to the United States (R. 466).

CHIN MING MOW, another Government witness, testified that he was born in Toishan, China, in 1918; that he first came to the United States in 1929 (R. 468), and that he was married in China in the year 1934 (R. 469); that he had a son named Chin Sung Hong who was born in China in the year 1936 and that he reported the birth of this son to the Immigration authorities (R. 470); that his son died in the year 1937 during the China-Japanese War, but that he did not know of his son's death till sometime in the 1950s; that he first went to appellant's house sometime during the year 1951 (R. 472) and that he wanted the Petitioner to prepare papers to have his son brought into the United States and which the Petitioner agreed to do (R. 473); that he signed some legal papers at the Petitioner's office (R. 474). Government's Exhibit "13" in evidence is the passport application in the name of Chin Sung Hong, the son of Chin Ming Mow. This witness testified that in the year 1952, the boy whom he believed to be his son Chin Sung Hong, arrived in the United States by plane from Hong Kong (R. 480); that after the boy whom he believed to be his son arrived at Ellis Island he, Chin Ming Mow, was requested by the Immigration Service to take blood tests so that his blood would be checked against the blood of his purported son (R. 482, 487). After the blood tests were taken the witness was informed that his blood and the alleged son's blood were not compatible (R. 484); that he discussed this fact with the Petitioner who stated that he would see what he could do to help the case (R. 485). Chin Ming Mow further testified that Peti-

tioner referred him to attorney Waterman and that Chin Ming Mow went to the attorney's office and signed some papers there (R. 489); that he believed that the boy brought over to the United States on the Chin Sung Hong application was his true son up until the time that the blood tests proved incompatible (R. 469), and that he only learned that the boy was not his real son after he informed his wife in China of the blood test results (R. 500).

CHIN KUNG CHEE, a Government witness, testified that he was born in China of Chinese parents who had never been in the United States but that he came to the United States in the year 1930 under the name of Sum Yuen Quay as the "paper son" of one Sum Wung Loy, an American citizen (R. 518); that he was married in China before he came to the United States and that he and his wife had two sons and one girl (R. 519); that he desired to bring his son Chin Nin Oon to the United States in the year 1952, and that he told the Petitioner to prepare the necessary papers for him (R. 520, 521). This witness further testified that on his third visit to the Petitioner's office, he told the Petitioner that the identification of his son was not right and that the Consul in Hong Kong reported that the boy was a member of the Chin clan (R. 528-529); that the Petitioner when thus informed stated that there was nothing he could do about it. Chin Kung Chee further testified that he had signed the affidavits contained in Government's Exhibit "8" in evidence at the Petitioner's office in the presence only of the Petitioner (R. 529) and that he paid the Petitioner $200 for preparing these papers and agreed to pay another $300 after the boy was admitted to the United States (R. 531). The boy was never admitted to the United States (R. 557). Government's Exhibit "14" in evidence is a civil complaint in the name of Sum Yuen

Quay, as father and next-of-kin of Sum Xin Oon against the Secretary of State to declare the boy a citizen (R. 538). The witness testified that he signed Exhibit "14" in an attorney's office, but he denied retaining the attorney Waterman, whose name appears as the plaintiff's attorney on said Exhibit (R. 436). Government's Exhibit "15" in evidence was a letter addressed by this witness to the attorney Waterman with a notation dated November 27, 1955, instructing the attorney to discontinue the case (R. 538).

Moy Mux Sing, a Government witness, testified through an interpreter, that he was born in Hoboken, New Jersey, in the year 1894 and that he made three trips to China (R. 563); that he was married in China in the year 1919 and that he and his wife have four children, three boys and one girl (R. 564). The witness reported the birth of all of these children to the U. S. Immigration office. However, the girl whose name was Moy Fung Mee (R. 564) was reported as a boy named Moy Hing Mee (R. 565); that his two oldest sons are presently in the United States but that his third son, Moy Hing Tung is presently in Hong Kong while the daughter resides in China (R. 565); that he tried to bring the third boy Moy Hing Tung into the United States in 1952 and that he went to Petitioner's office to have the necessary legal papers prepared at that time (R. 566); that the first time that he visited Petitioner's office he met a Chinese man who he called the Petitioner's assistant, who introduced the witness Moy Mun Sing to the Petitioner (R. 569). At the time of his second visit to Petitioner's office, the Petitioner told him that he knew a person who was willing to pay $1500 to the witness for the Moy Hing Mee "slot" that the money was to be paid only after a boy whom the unidentified person wished to bring over to the United States under the name of Moy Hing Mee had been admitted to the United States (R. 570);

that Moy Mun Sing paid Petitioner $50 for preparing legal papers for the admission of his third son, Moy Hing Tung, and that he was to pay the Petitioner $450 more after his third son was admitted to the United States (R. 571). Regarding the Moy Hing Mee slot, the witness testified that he never was paid the $1500 discussed (R. 572). The witness, Moy Mun Sing, further testified that he signed affidavits contained in Government's Exhibit "7" (Moy Hing Mee and Moy Hing Tung passport applications) in the Petitioner's office when the man he described as the Petitioner's assistant was present (R. 573); that he does not remember whether the Petitioner himself, any white man, or any Notary Public was present at the time. Government's Exhibit "16" in evidence (R. 578-579) is a complaint in a civil action brought by Moy Mun Sing as father and next-of-kin of Moy Hing Mee against the Secretary of State to have the boy declared a citizen. This witness further testified that neither his third son Moy Hing Tung nor the boy using the Moy Hing Mee "slot" ever came to the United States (R. 577); that he did not know personally the attorney Samuel B. Waterman whose name appears on Exhibit "16" as the attorney for the plaintiff (R. 578) but that he signed said Exhibit at the attorney's office where he was accompanied by the man he described as Petitioner's assistant (R. 577, 580). This witness further testified that he did not tell the Petitioner about the fact that he had a daughter in China reported by him to the United States Immigration Service as his son Moy Hing Mee and the fact that the son Moy Hing Mee was reported by him in place of the girl was not told to the Petitioner at the time the Moy Hing Mee travel papers were drawn up (R. 588). The first time this witness told anybody about the existence of the girl was when he appeared before the Grand Jury (R. 587).

The Attorneys—Witnesses for the Government

CHARLES E. BOOTH testified that he is an attorney admitted to practice in Washington, D. C., and that he has been practicing law in Washington, D. C., since 1923 when he resigned from the United States Immigration Office where he held the position as Chief Chinese Inspector (R. 353); that he knew the Petitioner for many years and that the Petitioner referred cases to him involving Chinese who wished to bring relatives over to the United States; that he forwarded to the American Consul in Hong Kong affidavits on behalf of the clients and that if any trouble developed in connection with such cases, he would follow the matters up with the State Department in Washington, D. C. (R. 355); that for forwarding affidavits to Hong Kong he was usually paid a fee of from $25 to $30 for each application forwarded and that the money was usually forwarded to him by the Petitioner by checks drawn on the China Overseas Agency at 11 Mott Street (R. 359); Booth further testified that he forwarded Government's Exhibit "7" (passport application submitted on behalf of Moy Hing Mee) and Government's Exhibit "8" (passport application submitted on behalf of Sum Nin Oon) to Hong Kong (R. 361); that in addition to the usual fee of $25 to $30 for forwarding affidavits, his arrangement was that when the applicant was admitted to the United States he was to be paid an additional fee of $75 (R. 377) and that in those cases when he had to appear before the State Department in support of one of the passport applications, he would have an independent fee set up based upon service required to be rendered in such proceedings (R. 378).

HARRY HOM DOW, another attorney, also appeared as a Government witness. Dow testified that he was admitted to practice law during the year 1929 (R. 379); that in

about 1948 or 1949, he did legal work for the Petitioner in that he handled cases referred by the Petitioner involving immigration and naturalization matters, prepared affidavits and appeared before the Immigration and Naturalization Service in New York in regard to these cases (R. 380); that in the handling of these immigration cases, when the Petitioner would recommend a client, the client would sometimes come up in person to his office, in which case Dow would obtain the information first hand and that sometimes Petitioner would obtain the information himself from the client and either forward the information to Dow's office or have an affidavit prepared in his own office which would be then sent to Dow to be checked (R. 382); that Dow was paid approximately $25 for each affidavit that he worked on (R. 384) and that in cases where he had to appear before the Naturalization Service, he charged an additional fee of $75 to $100 (R. 393); that between the years 1950 and 1952 he handled approximately between 75 and 100 cases that were referred by the Petitioner (R. 381); that he prepared the affidavits in the name of Ng Mong On and Woo Lun Ying contained in Government's Exhibit "1" (R. 384), the affidavit prepared in the name of Jew Ing Gim contained in Government's Exhibit "4" (R. 385), the affidavit prepared in the name of Moy Mun Sing contained in Government's Exhibit "7" and the affidavit prepared in the name of Sum Yuen Quay contained in Government's Exhibit "8" (R. 388); that usually five copies of the various affidavits would be prepared and executed (R. 389); that the clients that he knew as Ng Mong On, Sum Yuen Quay, Moy Mun Sing, and Jew Ing Gim were referred to him by the Petitioner (R. 394); that usually the Petitioner would pay him directly for the services rendered.

The Defense Witnesses

Samuel B. Waterman, appeared as a witness for the defense. The testimony of this witness and the matters brought out on his examination constitute matters of great import on this appeal. Waterman testified that he is an attorney and counselor at law, admitted to the New York State Bar for over 25 years and admitted to practice in the District Court for the Southern District for over 20 years (R. 590); that he knows the Petitioner since the year 1935 or 1936 (R. 591). Waterman directly contradicted the testimony of the Government witnesses Hom Ing Gim, Chin Way Mon, Chin Kung Chee and Moy Mun Sing. Waterman on being shown Government's Exhibit "6" in evidence (passport application in the name of Jew Sun Ai) stated that he remembered the matter; that it was a case that he had handled (R. 592). Waterman refreshing his recollection from his office files stated that on or about December 19, 1952, a person who he was told was named Jew Ing Gim came to his, Waterman's, office together with a translator from the Petitioner's office, either a Mr. Albert Kee or one Wilbur Chung (R. 594); that the person known to him as Jew Ing Gim, through the translator, informed him that the American Consul in Hong Kong had refused to issue travel papers to his son (R. 596); that from the information give him by the person known to him as Jew Ing Gim plus information obtained from affidavits that Jew Ing Gim brought, Waterman prepared a civil complaint in the name of Jew Ing Gim as father and next-of-kin of Jew Sun Ai against the Secretary of State to have the boy declared a citizen. This complaint is marked Government's Exhibit "6" in evidence. The complaint was verified by the person known to Waterman as Jew Ing Gim before a Notary Public (R. 597) and was filed shortly thereafter with the Clerk of the United States District

Court for the Southern District of New York (R. 600); that the person he knew as Jew Ing Gim, through the appellant, paid Waterman $150 for legal services rendered in the civil case (R. 602); that the civil action in the name of Jew Ing Gim was discontinued, on November 9, 1955, pursuant to instructions from said person (R. 600).

Regarding the civil action instituted in the name of Jew Ing Gim on behalf of his claimed son to have the boy declared a citizen, this action was referred to by Waterman as an action brought under Section 903 of the Nationality Act also known as Section 503 of the United States Code of Immigration Law. Waterman testified that in his opinion, the right to bring an action under that law expired on or about December 24, 1952 (R. 603). Waterman on cross-examination, explained that the flurry of civil cases brought under the aforementioned statute during the latter part of 1952 was caused by the fact that Chinese newspapers in New York City in the latter part of 1952 informed their readers that the rights under the law granting reviews by the District Court from the determination of the Immigration Department would expire in late December of that year (R. 655).

Waterman was shown Plaintiff's Exhibit "10" in evidence, the civil complaint in the name of Chin Way Mon as father and next-of-kin of Chin Seu Loon to have the boy declared an American citizen. He stated that he had handled that case (R. 605); that on or about December 15, 1952, a person introduced to him as Chin Wah Loon came to his office. Waterman, incidentally, testified that that case was not recommended by the Petitioner (R. 655); that the person he knew as Chin Wah Loon told him that he, Chin Wah Loon, had a brother in Hong Kong whose application to enter the United States had been denied. Waterman testified that the person he knew as Chin Wah Loon stated that his father, Chin Way Mon, was then in

Hong Kong and that the father wanted to institute a civil action in the Court to have his son, Chin Sou Loon, admitted to the United States. (R. 606); that Chin Wah Loon gave him the necessary information for preparation of a complaint, which Waterman prepared and which is Government's Exhibit "19" in evidence; that he signed same as the attorney and filed it with the United States District Court for the Southern District of New York (R. 607). This complaint was not verified by the plaintiff Chin Way Mon for the reason that Chin Way Mon was out of the country (R. 607). Waterman testified that when the civil case brought in the name of Chin Way Mon appeared on the Court calendar in 1955 he wrote first to Chin Way Mon and when Chin Way Mon's letter was returned unopened and undelivered, he wrote to Chin Wah Loon. On or about November 29, 1955, a person introduced to Waterman as Chin Way Mon and his son the person known as Chin Wah Loon came to Waterman's office (R. 612); that Waterman was paid $275 by the person he knew as Chin Way Mon and was instructed to discontinue the action (R. 616); that the action was discontinued on May 9, 1956.

Waterman was shown Exhibit "14" in evidence, the civil complaint in the name of Sum Yuen Quay as father and next of kin of Sum Nin Ong against the Secretary of State to have the boy declared a citizen (R. 619). The witness testified that he had handled this case also from his recollection, as refreshed from his file, he testified that on or about December 22, 1953, a person introduced to him as Sum Yuen Quay came to his office accompanied by either Albert Kee or Wilbur Chang, the persons referred to hereinafter, who acted as interpreter (R. 620). Waterman further testified that the person he knew as Sum Yuen Quay stated that the application of his son for admittance to the United States was denied by the Immigration Department and that he wished to bring a civil action to have

the boy brought over. Sum Yuen Quay had with him a copy of the travel affidavit of his son and Waterman prepared the complaint from the information and documents given him by said person and contained in the said affidavit. The complaint, which is Government's Exhibit "14" in evidence, was verified by Sum Yuen Quay approximately two days before Section 503 of the Immigration Act expired (R. 626). Waterman stated that he never saw the person he knew as Sum Yuen Quay after that date and that he was never paid for the services rendered in this civil action; that he had sent a letter to the Petitioner on which he requested an authorization to withdraw from the case and that he received later a copy of said letter with Sum Yuen Quay's signature thereon authorizing him to do so (R. 627).

Waterman was shown Government's Exhibit "16" in evidence, the complaint in the name of Moy Mun Sing as father and next-of-kin of Moy Hing Mee against the Secretary of State seeking a Court order to declare the boy a citizen. Waterman testified that he had handled that case. He stated from his recollection, as refreshed by his files, that a person introduced to him as Moy Mun Sing came to his, Waterman's, office with either Albert Kee or Wilbur Chung; that Moy Mun Sing stated that his son in Hong Kong was denied permission to come to the United States and that he wanted to institute a civil action for the boy's admission (R. 630). Moy Mun Sing brought a copy of an affidavit with him and from this paper plus the information given him by said person, Waterman prepared a civil complaint, Government's Exhibit "16" in evidence, which complaint was verified by Moy Mun Sing. Waterman further testified that Moy Mun Sing visited his office again with an interpreter on or about November 22, 1955. At that time the witness, Waterman, stated, after his urged claim of client-attorney privilege was denied by the Court, that

he discussed the pending civil case with Moy Mun Sing and that the client told Waterman that he had a son in the United States, one Moy Hing Fung who would be a witness in the civil case. Waterman then discussed the fee with his client and told him that unless he was paid, he, Waterman, would either withdraw from the case or the case would be dismissed (R. 633). Waterman stated that he was never paid a fee in this case and that in March, 1956, he wrote Moy Mun Sing, that unless he was paid, he would do nothing more in the case. This letter was never answered and Waterman assumed that the case was marked off the calendar (R. 634).

The United States Attorney after having cross-examined Waterman extensively on the type and number of immigration cases that Waterman had handled (R. 649, *et seq.*) and the results of the legal actions brought by Waterman, proceeded to cross-examine Waterman as to what he did with the fees that he collected in the immigration cases and whether he kept any records concerning the cases and these fee payments. In answer to the questions, Waterman testified that he deposited the fees received in his checking account which he maintained in the Trust Company of North America at 115 Broadway (R. 692, 15a). Apparently for dramatic effect the United States Attorney requested this answer to be repeated. The next question was, did Waterman keep any records concerning these payments. Waterman's answer was that he did keep records, to wit: his checking account and the case file itself (R. 693, 16a). *Waterman was then asked if he believed that the answers that he had given would incriminate him.* This question was objected to and the objection was sustained (R. 693, 16a). The United States Attorney then approached the side bar and brought to the attention of the Judge, in the absence of the jury, that on being asked these questions

before the Grand Jury, Waterman had claimed his privilege under the Fifth Amendment and refused to answer the aforementioned questions on the ground that they might tend to incriminate him (R. 694, *et seq.*, 16a, *et seq.*). The United States Attorney then stated that he proposed to show the invocation of the Fifth Amendment by Waterman as a prior contradictory statement (R. 695, 17a). The defendant's attorney objected vehemently to the introduction of such proof urging that to receive such proof would be highly prejudicial, a fact admitted by the U. S. Attorney, who stated that "I know it is prejudicial and it shows the man's testimony is false." Defendant's attorney then informed the Court that if the Court would permit this proof, the defendant would ask for the withdrawal of a Juror (17a). After the Trial Court indicated that he would overrule any objection to such proposed proof, the discussion before the side bar was discontinued and in the presence of the jury the witness Waterman was read the various questions and answers that he had given before the Grand Jury with respect to questions and answers as to where he deposited the fees received in the immigration cases and what sort of books and records he kept and he was further asked whether he had claimed his rights under the Fifth Amendment before the Grand Jury in answer to said questions (R. 699, 20a). At this point the attorney for the Petitioner whose objection was overruled by the Court moved for the withdrawal of a juror, which motion was denied (R. 700, 21a). Waterman, in reply to these questions stated that he did not recollect the questions and answers given before the Grand Jury wherein he claimed his privilege under the Fifth Amendment before the Grand Jury but that if those statements are from the minutes (R. 702, 23a) the questions propounded to him before the Grand Jury and the answers to these questions as read by the prosecutor from the Grand Jury minutes were no doubt so asked and so answered.

The Petitioner-Defendant's Testimony

SING KEE, the Petitioner herein and the defendant below, took the stand and testified in his own defense. Petitioner Sing Kee, American born, 61 years of age, married and having five children (R. 706) has an exemplary war record for his services in World War I (R. 710-713). Petitioner testified that on his discharge from the Army in 1919, he joined the U. S. Immigration Service with which he served from 1919 until 1928 (R. 714); that at the time of the trial and previous thereto he conducted the business of the China Overseas Travel Service at 11 Mott Street, New York City; that most of his clients are of Chinese origin and do not speak English and that part of his services consisted of assisting his clients in filling out and preparing passport and visa applications for travel abroad (R. 715); that he also processes people coming over from Hong Kong (R. 716) and that he prepares necessary travel documents for his clients and in general tries to facilitate the travel arrangements made for or by his clients (R. 717).

Petitioner testified that Government's witness Dong Soon Chor was known to him under the name of Ng Mong On and that he met this individual for the first time, when Dong, together with his wife, came to the appellant's office and asked the Petitioner to draw up necessary papers for them to bring their son to the United States; that at that time, Dong gave Petitioner his Certificate of Identity, travel documents and a two or three page letter containing the family history of the witness Dong under the name of Ng Mon On, the name under which said witness was known to the Petitioner at the time (R. 719); that a first set of affidavits were prepared to be submitted in support of the application for a passport of the son of Dong. This set of papers was marked in evidence as Defendant's Ex-

hibit "C" (R. 728-729). Petitioner further testified that these papers were prepared in the office of the attorney Harry Dow and that Dong took the papers home to check them over (R. 724); that Dong brought Exhibit "C" back to Petitioner's office and told Petitioner that certain corrections should be made in the papers. A new set of papers was typed up with the corrections. These papers are the affidavits contained in Government's Exhibit "1" in evidence (R. 726).

Petitioner further testified that after the corrected affidavits were signed, Dong was given one or two copies and attorney Harry Dow was given either one or two other copies. Dow was to send a copy of these affidavits to the Consul in Hong Kong and Dong was to send a copy to his son in Hong Kong. At the time of the delivery of the affidavits to Dong, the Petitioner asked for and collected $100 from Dong (R. 734). Out of this sum the attorney Dow was paid approximately $30 and Petitioner kept about $45 or $50 (R. 736) for his services.

The next time the Petitioner saw Dong was when Dong called at the Petitioner's house and stated that he wanted his son's case taken up with the State Department and that he wished it to be expedited (R. 738) as Dong's son was approaching the age of 16, which age Dong believed was the top age for bringing sons of American citizens from China under the law (R. 738). Petitioner testified that he told Dong that if Dong's son's case was to be taken up with the State Department, Mr. Booth, a Washington attorney who specialized before the State Department, would want a retainer of between $75 and $100 and that Dong agreed to pay the same (R. 738). The case was subsequently referred to the attorney Booth in Washington.

Petitioner further testified that the next time he saw Dong was in the early summer of 1950 when Dong told

Petitioner that his son's application was going to be approved and Dong wanted to purchase from the Petitioner's office a ticket to bring the boy over; that Dong stated he did not have the money on him but that he would have it sent up; that later Ng Gim Ting brought the money over stating that this was the money for Ng Mong On's (Dong's) son (R. 742). The Petitioner further testified that he did not see Dong again until the son, Ng Quock Keung, arrived in the United States (R. 743); that after the boy arrived Petitioner was told by Dong that the boy was being detained on Ellis Island and that Dong wanted the Petitioner to engage counsel for him; that Petitioner suggested the name of Harry Dow (R. 744). The boy subsequently was admitted to the United States and after his admission, Petitioner was paid $300 more. Of this sum Petitioner paid $100 to Harry Dow for his legal services, $75 to Booth for his legal services, and Petitioner kept the balance (R. 745).

The Petitioner testified that he subsequently saw Dong in 1945 at the offices of the On Leong Association, when, for the first time he learned that the family name of the man he previously knew as Ng Mong On was Dong Soon Chor (R. 746). Petitioner testified that Dong later told him that he had received a letter from the State Department concerning the admission of his son and that Petitioner recommended Dong to the attorney Waterman. Petitioner testified that the first time that he had learned that the boy Ng Quock Keung was not the real son of Dong was after he, the Petitioner, was indicted (R. 750) and that he had never heard or was ever told of Dong selling a "slot" in the name of Ng Quock Keung to Ng Gim Ting (R. 749).

Petitioner further testified that Government witness, Hom Ing Gim, known to the Petitioner under the name of Jew Ing Gim was introduced to him by Ng Gim Ting in

the year 1949 (R. 759); that Ng Gim Ting told the Petitioner that Hom Ing Gim was the cook in Ng Gim Ting's restaurant and that Hom Ing Gim wanted to bring his boy Jew Sun Ai to the United States from Hong Kong (R. 760); that Hom Ing Gim requested Petitioner to prepare papers for this purpose and that Hom Ing Gim gave the Petitioner his Certificate of Identity and two photographs to be used with the papers; that around December, 1952, Petitioner was notified by Hom Gim that the passport application of Jew Sun Ai, was denied (R. 772); and that Petitioner recommended the father Hom Ing Gim to the attorney Waterman for further appeal (R. 773).

Petitioner further testified that he never met Chin Way Mon, but that he met Chin Wah Loon in the latter part of December 1952 and that Chin Wah Loon claimed to be the oldest son of Chin Way Mon (R. 785); that he was told by a third party that Chin Wah Loon was a brother of a father who wanted to start a Section 503 action to have his son admitted from Hong Kong as the son of an American citizen (R. 787); that he sent Chin Wah Loon to the attorney Waterman and that that was the last that he had anything to do with the matter (R. 788).

Petitioner further testified that he knew Government's witness Chin Kung Chee under the name of Sum Yuen Quay (R. 788) and that Chin Kung Chee came to his office in the summer of 1952 to have papers prepared to bring his son, Sum Nin Oon to the United States (R. 790). The affidavits submitted in support of the application to admit the boy using the name Sum Nin Oon to the United States are Government's Exhibit "8".

Petitioner further testified that he collected $100 from Chin Kung Chee for preparing these papers and that out of his money, he paid attorney Dow $25 or $30 and that he paid a man named Crean $2 per hour for the typing

work done in that mater. The balance of $45 or $50 he retained for his own services (R. 792); that Chin Kung Chee at the time he appeared at Petitioner's office brought travel affidavits and photographs; that he stated to Petitioner that the photographs were of him and of his son; that h saw Chin Kung Chee two more times and that he had the travel affidavits prepared and sent to Hong Kong on behalf of Chin Kung Chee either by the attorney Harry Dow or the attorney Booth (R. 793); that late in 1953, Chin Kung Chee, whom he knew as Sum Yuen Quay, told the Petitioner that the people in Hong Kong found out that he was a member of the Chin and not the Sum family; that he at that time asked Chin Kung Chee whether he was a Chin and when he was informed that he was a Chin, Petitioner stated to him that he could do nothing further for him and that he, the Petitioner, would have to abandon the case (R. 796); that the time that he learned that Government witness Chin Kung Chee was a member of the Chin family was after he had recommended this client to the attorney Waterman and after a civil action had been instituted (R. 796-797); that neither he nor Waterman were ever paid anything in connection with the civil action.

Petitioner further testified that he met Government witness Moy Mun Sing in May of 1952 at which time Moy Mun Sing told the Petitioner that he had two sons in China whom he wished to bring to the United States (R. 798); that Moy Mun Sing at the time gave the Petitioner his Certificate of Identity and other information required in order for the Petitioner to have the necessary passport affidavits prepared; that he prepared two sets of passport affidavits. One set was for the son Moy Hing Tung and the other set was for another son Moy Hing Mee (R. 799). The photographs annexed to Government's Exhibit "7" was given to him by Moy Mun Sing who at the

time told him that the photograph was a picture of his Moy Mun Sing's son; that he received $50 for each set of papers or for both sets the total of $100 out of which he paid attorney Booth $50 (R. 802); that Moy Mun Sing came to his office several months after the papers were sent out and that on the second visit, which was in about December, 1952, Moy Mun Sing told the Petitioner that he wanted to file Section 503 suits, as the deadline to bring such suits was fast approaching; that he referred Moy Mun Sing to the attorney Waterman (R. 807). Petitioner categorically denied ever having had a conversation with anybody concerning the sale of the Moy Hing Mee "slot" for $1500 (R. 808).

On cross-examination of the Petitioner, the Assistant U. S. Attorney, after questioning the Petitioner regarding income received from his business for various years, questioned the Petitioner from the Petitioner's income tax returns filed for the years 1951 (R. 866, 26a) and 1952 (R. 875, 33a). These income tax returns were marked Exhibits "17" and "18" for identification, respectively. The attorney for the Petitioner raised timely objection to references to use of the aforementioned income taxes in the cross-examination of the Petitioner, but these objections were overruled and questioning of the Petitioner by the United States Attorney from Exhibits "17" and "18" for identification, which were papers never admitted in evidence, was permitted (R. 867, et seq., 26a, et seq., R. 875, et seq., 33a, et seq.). Although the objection was raised that income tax returns are confidential in nature (R. 867, 27a), the United States Attorney was permitted to continue cross-examining the Petitioner from them over objections of Petitioner's counsel and despite the fact that no proper foundation was established for the use of said documents on this trial.

CHARACTER WITNESSES

Petitioner on the trial presented a number of witnesses who testified as to his reputation for honesty, truth telling and integrity. They all testified that that reputation was good. These witnesses were Judge Wahl, Colonel Paul Akst, David De Voto, a retired policeman, Paul Chang, a Lutheran pastor, Mary Banta a missionary in Chinatown, Leon Michelini a trucking executive, Dr. Francis K. Shepard, a Baptist pastor, and others (73a).

The above outline covers substantially all the testimony introduced at the trial of the Petitioner both by the Government and the appellant.

Basis of Federal Jurisdiction in the Court of First Instance

The basis of Federal Jurisdiction in the Court of first instance was that the crimes charged were in violation of the Federal Law (18 U. S. C. Sections 371, 2, 1542 and 3238).

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

POINT I

Prejudicial error was committed by the Trial Court in permitting the Government to elicit from the witness Samuel B. Waterman testimony that he had invoked the Fifth Amendment at a grand jury hearing as to matters that he testified to at the trial herein.

This Point is intended to cover questions 1, 2 and 3 presented to this Court for review in Pages 3 and 4 of

this petition. All of the said questions concern the alleged error on the part of the Trial Court in permitting the cross examination of the witness Samuel B. Waterman as to his prior claim of privilege under the Fifth Amendment before the Grand Jury concerning facts that he testified to fully at the trial.

The Court of Appeals at the outset of its opinion, 248 F. 2nd ....., No. 90—October Term, 1957, of the United States Court of Appeals For the Second Circuit, which opinion is annexed hereto as Exhibit "A", characterized the testimony of the witness Waterman, at Page 59, as of a minor nature, to wit, that he testified to a relatively minor facet of the case.

The prosecution, on the contrary, conceded that Waterman's testimony was of great importance to the Petitioner defendant. The Government counsel, in urging the admissibility of the testimony of Waterman in relation to his claim of privilege before the Grand Jury, stated to the Trial Court: "If Your Honor please, the defense has called this witness. They have used him to give testimony to their own interests *and he has given substantial testimony for them, much of which he could not give before the Grand Jury.* I intend to show the contradiction." (Emphasis supplied.) (17a)

It was upon this erroneous primary assumption that the Court of Appeals based its conclusion that no error was committed by the Trial Court in permitting cross examination of the witness Waterman as to his invocation of the Fifth Amendment before the Grand Jury.

With due respect to the Court of Appeals, the Petitioner submits that since the sole issue before the jury was credibility, the witness Waterman was the most im-

portant defense witness in the eyes of the jury,* as the Petitioner who testified in his own defense was obviously an interested witness.

The witness Waterman directly contradicted the testimony of Government witnesses Hom Ing Gim (R. 594, et seq.), Chin Way Mon (R. 605, et seq.), Chin Kung Chee (R. 619, et seq.), and Moy Mun Sing (R. 630, et seq.). It was through the testimony of the aforementioned Government witnesses that the Government based its proof in attempting to prove the guilt of the Petitioner to four counts of a five-count indictment.** It is quite obvious that had the jury believed the testimony of the witness

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* Aside from character witnesses, the sole defense witnesses were Samuel B. Waterman, an attorney (R. 590, 14a) and the Petitioner (R. 709, 23a). The sole issue before the jury was the credibility of the Government witnesses and that of the Petitioner-Defendant.

** The indictment is annexed to this petition as Exhibit "B" hereof. Count 1 of the indictment, the Conspiracy Count, names the Government witnesses Hom Ing Gim (named in indictment as Hom Wing Gim), Chin Kung Chee and Moy Mun Sing as co-conspirators, and their testimony was used also in proof of that Count. The witness Chin Way Mon testified that he had a "paper son", Chin Seu Loon (R. 454) and that he sold the Chin Seu Loon "Slot" to George Wong, who is named in the indictment as a co-conspirator. The witness Chin Way Mon's testimony was used solely in support of Count 1.

Count 3 of the indictment referred to a passport application in the name of Jew Sun Ai as the son of Jew Ing Gim. The witness Hom Ing Gim is also known as Jew Ing Gim and proof of Count 3 of the indictment was based upon the testimony of this witness.

Count 4 of the indictment referred to a passport application in the name of Moy Hing Mee as son of Moy Mun Sing and proof of Count 4 of the indictment was based upon the testimony of the witness Moy Mun Sing.

Count 5 of the indictment refers to a passport application in the name of Sum Nin Gen. The witness Chin Kung Chee is the father of said applicant and proof of this count was based upon the testimony of Chin Kung Chee.

Count 5 is not before the Court on this petition as it was dismissed at the close of the Government's case.

Waterman, it would of necessity had to disbelieve the testimony of the aforementioned Government witnesses with a resultant acquittal on at least three if not all four of the remaining Counts in the indictment.*

The cross-examination of the witness Waterman which elicited the fact that this witness on a prior appearance before a Grand Jury invoked the Fifth Amendment arose in the following manner. On cross-examination, the witness Waterman was asked by the United States Attorney questions regarding fees paid him by clients referred to him by the Petitioner (15a). These questions were fully answered. Then the witness was asked what he did with the fees after he received them. The witness answered that he used said fees and that he deposited some of them in his checking account. On being asked in which bank the checking account was located, he answered that he maintained his checking account in the Trust Company of North America at 115 Broadway. Waterman was then asked if he kept records concerning the payment of the aforementioned fees. He answered in the affirmative, and on being asked the kind of books and records he kept, Waterman stated that he had a checking account wherein his deposits were noted and that he kept a record of his fees with the file of each case (15a-16a). Waterman was then asked whether he thought that his answers to the aforementioned questions would tend to incriminate him, a highly prejudicial question to be asked before a jury. Objection was taken to said question and said objection was sustained.

The United States Attorney, in a discussion taking place out of the hearing of the jury, brought to the attention of the Court that this witness while testifying before the Grand Jury, claimed his privilege under the Fifth Amendment and refused to answer on constitutional

* The jury returned a verdict of guilt as to all four Counts submitted to it at the close of the case.

grounds the aforementioned questions when they were put to him before the Grand Jury and that the government wished to bring this fact out to the jury. The reason for the desire of the United States Attorney to bring this fact to the attention of the jury was submitted by the prosecutor that "I know it is prejudicial. It shows the man's testimony is false" (17a).

THE EXCERPTS OF THAT TESTIMONY ARE AS FOLLOWS:

> "(695) Mr. Goettel: It is a prior statement, contradictory statement before the Grand Jury.
>
> Mr. Stim: It is the most prejudicial thing.
>
> Mr. Goettel: *I know it is prejudicial. It shows the man's testimony is false.* (Emphasis supplied.)
>
> Mr. Stim: And if your Honor will permit it, I will ask for the withdrawal of a juror. It is very unfair.
>
> Mr. Goettel: If your Honor please, the defense has called this witness. *They have used him to give testimony to their own interests and he has given substantial testimony for them, much of which he could not give before the Grand Jury. I intend to show the contradiction.*" (Emphasis supplied.) (17a).

The United States Attorney was then permitted to ask the witness Waterman the following questions:

> Q. And were you asked before the Grand Jury as follows, the following questions:
>
> "'Q. Where would you deposit them? What bank?'"
>
> Were you asked those questions? A. I assume that that I was, if you have it there, in the minutes.

Q. Were you also asked this question:

"'Q. What sort of books and records do you keep?'"

A. I have no recollection whether I was asked that. If you have it here, I will concede that I was asked it.

Q. Do you recall the answers you gave to those questions? A. I do not at this time (19a).

(The following discussion then took place at the (6788) side bar, out of the hearing of the jury.)

Mr. Goettel: I now propose to ask him if he proposed to read the answers to those questions. If not, I will ask him that.

The Court: Do you state that he raised the Fifth Amendment before the Grand Jury?

Mr. Goettel: Yes.

Mr. Stim: Your Honor, is that inconsistent with the statement that he gave here about the deposit in the Trust Company of North America? This is not inconsistent (19a).

The Court: Can't he show that?

Mr. Stim: No.

The Court: That he raised the Fifth Amendment in response to these questions?

Mr. Stim: He cannot, your Honor.

The Court: Why not?

Mr. Stim: That would not be inconsistent. The man refused to answer at one time.

Mr. Goettel: Would this be proper: Would your answers, or your answers to these questions, be incriminatory?

Mr. Stim: No.

Mr. Goettel: If he says no, then I can ask (6789) him.

Mr. Stim: If you ask that question, I will ask for the withdrawal of a juror.

The Court: Can you ask him? Can you ask him, 'Did you raise the question of a Fifth Amendment?'

Mr. Stim: No.

The Court: I cannot possibly see any objection.

Mr. Stim: I cannot stop you, if your Honor will permit it (20a).

(End of discussion at side bar out of the hearing of the jury.)

BEFORE THE JURY:

Q. "'Where would you deposit them.'"

'Q. "What bank?', and then,"

'Q. "What sort of books and record do you keep?'" When you were asked those questions, did you reply that any answer might incriminate you?

Mr. Stim: Just one moment.

The Court: Why not do as I suggested? (20a).

Mr. Goettel: I thought I was.

The Court: I will rule on the question, but will you do as I asked, as I suggested it be asked. Did you say so and so before the Grand Jury?

Q. Did you claim your rights under the Fifth Amendment before the Grand Jury in answer to those questions?

(700) Mr. Stim: Your Honor, at this time I move for the withdrawal——

The Court: You make an objection?

Mr. Stim: I object to that question.

The Court: Overruled.

Mr. Stim: And I ask for the withdrawal of a juror.

The Court: Overruled, denied.

Mr. Stim: Exception.

A. I am sorry?

Mr. Goettel: Will you please read the question?

(Pending question read.)

A. If it is stated there that I did, I did.

Q. Yes or no. A. If it is stated there that I did—

Mr. Stim: Will your Honor state that every citizen——

Mr. Goettel: Your Honor——

Mr. Stim: Just one minute, you made a speech.

The Court: Address the Court.

Mr. Stim: I respectfully ask the Court to instruct the jury that every citizen has a right under the Constitution of the United States—(21a).

Mr. Goettel: I want these speeches before (701) your Honor and not for the jury.

The Court: He has a right to make this choice.

Mr. Stim: He has a right to make that choice and invoke his constitutional right, and that is not to be inferred as any evidence of guilt on the part of the defendant.

Mr. Goettel: Your Honor, I object to these continual statements on the part of the counsel in front of the jury.

The Court: There is no necessity for that at this time except to say that the raising of that issue, if it is raised by this counsel, or this witness, is not in any way to reflect upon the defendant.

Mr. Goettel: What was the last question and answer?

Mr. Stim: Your Honor, how many times must we have this question and answer?

The Court: Just wait a minute, Mr. Stim. Read the question.

(Pending question read.)

Q. I want a yes or no answer, whether to the best of your recollection you claimed the Fifth Amendment when you were asked those questions.

Mr. Stim: May I have the same objection, (702) your Honor.

A. I do not recall whether I did or not.

Q. Do you recall making these answers to these questions:

'Q. What bank? A. I refuse to answer, Mr. Goettel' (22a).

"'Q. On what grounds? A. On the grounds that it may incriminate me.'"

Mr. Stim: Your Honor, I have an objection to all that line.

The Court: Yes, your objection has been noted and your objection has been overruled.

Q. Do you recall making those answers at that time? A. I don't recall it, but if it is down in the minutes there, then I made it.

Q. Do you recall making this answer to this question:

'Q. "What sort of books and records do you keep? A. I refuse to answer on the ground it may incriminate me.

A. I don't recall it but the same thing, if it is down there, then I made it" (23a).

These questions and answers propounded to and given by the witness Waterman before the Grand Jury, were permitted by the Trial Court to be asked at the trial for the purpose of having the Trial Jury become aware that the witness invoked before the Grand Jury his constitutional right under the Fifth Amendment, because "there was a case that went up from this Court where the use of it was sustained" (17a), apparently relying on the decision of this Court in *Grunewald* v. *United States*, 233 F. 2d 556, since reversed by this Court (353 U. S. 391, 1 L. ed. 2d 931, 77 S. Ct.—Nos. 183, 184 and 186, argued April 3 and 4, 1957, decided May 27, 1957).

Up to the time that the aforementioned series of questions were permitted on cross-examination, it must be conceded (as the prosecutor did) (17a), that the witness Waterman was a very strong witness for the defense. After the Government had been permitted to ask a series of questions relating to the witness' claim of privilege before the Grand Jury on the grounds of possible self-incrimination, the credibility of this witness was completely destroyed.

The trial in this case took place during the month of February 1957 which was prior to the decision of the *Grunewald* case by this Court.

In the *Grunewald* case the conviction of the co-defendant Halperin as to counts 5, 6 and 7 was reversed for error committed at the trial similar to the error claimed here. In the *Grunewald* case, Halperin, the witness who took the stand, was a co-defendant, while in the present case the witness Samuel B. Waterman was not. In *Grunewald*, the Court permitted the co-defendant, Halperin, to be cross-

examined as to the fact that he had claimed, as did Waterman, his constitutional privilege against self-incrimination before the Grand Jury concerning certain questions that he had voluntarily testified to at the trial. The issue was defined by this Court on page 418 as follows:

> "It is, of course, an elementary rule of evidence that prior statements may be used to impeach the credibility of a criminal defendant *or an ordinary witness*. But this can be done only if the judge is satisfied that the prior statements are in fact inconsistent. 3 Wigmore, Evidence, §1040. And so the threshold question here is simply whether, in the circumstances of this case, the trial court erred in holding that Halperin's plea of the Fifth Amendment privileges before the grand jury involved such inconsistency with any of his trial testimony as to permit its use against him for impeachment purposes." (Emphasis supplied.)

This Court thereon went on to state at page 423:

> "We are not unmindful that the question whether a prior statement is sufficient inconsistent to be allowed to go to the jury on the question of credibility is usually within the discretion of the trial judge. But where such evidentiary matter has grave constitutional overtones, as it does here, we feel justified in exercising this Court's supervisory control to pass on such a question. This is particularly so because in this case the dangers of impermissible use of this evidence far outweighed whatever advantage the Government might have derived from it if properly used. If the jury here followed the judge's instructions, namely, that the plea of the Fifth Amendment was relevant only to credibility, then the weight to be given this evidence

was less than negligible, since, as we have outlined above, there was no true inconsistency involved; it could therefore hardly have affected the Government's case seriously to exclude the matter completely. On the other hand, the danger that the jury made impermissible use of the testimony by implicitly equating the plea of the Fifth Amendment with guilt is, in light of contemporary history, far from negligible. Weighing these factors, therefore, we feel that we should draw upon our supervisory power over the administration of federal criminal justice in order to rule on the matter. Cf. McNabb v. United States, 318 U. S. 332, 87 L. ed. 819, 63 S. Ct. 608.

We hold that under the circumstances of this case it was prejudicial error for the trial judge to permit cross-examination of petitioner on his plea of the Fifth Amendment privilege before the grand jury, and that Halperin must therefore be given a new trial on Counts 5, 6 and 7. * * * "

A recent decision of the United States Court of Appeals for the Tenth Circuit which follows the *Grunewald* decision of this Court and which is apparently in conflict with the opinion of the United States Court of Appeals for the Second Circuit in the instant case is *Travis v. United States*, 247 F. 2d 130. In that case a character witness for the defendant was asked by the Government on cross-examination whether or not he had heard that when the defendant Travis appeared before a U. S. Senate Committee and was asked if he was at that time a member of the Communist party, that he had refused to answer on the ground that it would incriminate him. Before overruling objection to the question, the Trial Court, as it did in the instant case, made inquiry as to the factual background of the assumption contained in the question. When it was determined that that did occur, the

Trial Court overruled the objection and permitted the question. On appeal this error was urged as requiring reversal. In reversing the conviction and remanding for a new trial the Court of Appeals for the Tenth Circuit said *inter alia*:

> "* * * One who claims the rights and privileges of the Constitution most certainly does not exhibit a character defect of any kind and, if one who lawfully asserts the shelter of the Fifth Amendment becomes, in so doing, a person of guilt or a perjurer in the minds of some, the shame lies with those who misunderstand and not with him who is entitled to protection. Cross examination probing the witnesses' knowledge of Travis's claim of constitutional immunity during the McCarren hearing had, we believe, no proper probative value but if such existed it was, as stated by Mr. Justice Harlan in Grunewald v. United States (decided May 27, 1957), 'far outweighed by its impermissble impact upon the jury,' had 'grave constitutional overtones,' and was fraught with 'the danger that the jury made impermissible use of the testimony by implicitly equating the plea of the Fifth Amendment with guilt * * *.' The admission of this evidence necessitates a new trial. Grunewald v. United States, supra; Curcio v. United States (decided June 10, 1957."

The United States Attorney was or should have been well aware that at the time when this testimony was elicited, the decision of the Court of Appeals for the Second Circuit in *Grunewald* (233 F. 2d 556) upholding the Halperin conviction, was being appealed to this Court and that that appeal was then pending. The Trial Court permitted this testimony relying on the decision of the United States Court of Appeals for the Second Circuit in *Grunewald, supra* (17a). The Government gambled on the chance that

this Court would sustain the conviction notwithstanding the claimed error. Having gambled and lost, the Government can blame no one but itself for the reversible error committed in the instant case.

The Court of Appeals in its opinion in an attempt to buttress its decision urges that the Petitioner on the direct examination of Waterman opened the door to cross-examination of the witness Waterman as to his invocation of the Fifth Amendment before the Grand Jury. It was the Court of Appeals which for the first time raised this contention. This point was neither raised at the trial nor in the Government's brief or on the argument of the appeal, nor was that testimony admitted on such grounds. (See Pages 39 to 45 of this Petition.)

The United States Court of Appeals for the Second Circuit in a recent case reversed a conviction, basing as one of the grounds of its reversal on the fact that the Government on cross-examination elicited the fact that a defense witness invoked the Fifth Amendment before a Grand Jury. See *United States* v. *Tomaiolo*, 248 Fed. 2d . . . No. 24509, 2nd Circuit, Filed November 21, 1957. In that case, the Second Circuit cited the decision in *Grunewald*, but went on to state in effect that it was not bound by *Grunewald*, as the Court of Appeals' opinion on reversal states that each of the errors claimed on appeal in and of themselves alone would not have warranted reversal, the reversal being based on the aggregate of errors.

Certainly on this point alone certiorari should be granted.

POINT II

The Government used improperly obtained matter to use in cross-examination of the Petitioner, in violation of his rights under the federal laws.

On the cross examination of the Petitioner, he was questioned from tax returns filed by him for the years 1951 and 1952. These returns were marked as Exhibits 17 and 18, respectively, for identification (26a, 33a). While the returns themselves were not admitted in evidence, the Petitioner was cross examined extensively from same so that the jury was apprised of the contents of said tax returns from the nature of the questions propounded and the answers to same. Timely objection was taken by Petitioner's counsel to this line of questioning (27a) but said objection was overruled by the Court.

While it is admitted that tax returns may be used in a proper case, it is respectfully submitted that they were improperly used on the trial herein and that by using said returns for cross examination purposes, the Government made use of illegally obtained evidence, and the conviction based upon the use of said evidence illegally obtained should be reversed.

Section 55 of Title 26 United States Code provides that tax returns "shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President".

Although objection was immediately taken to the use of any tax returns, there was no offer on the part of the Government or order by the Court requiring the Government to show authorization from the President or from the Com-

missioner of Internal Revenue authorizing use of these papers for the particular purposes of this trial by the Government.

The Federal Tax Regulations (1954) Section 458.1 *et seq.* outline an elaborate procedure regarding inspection of returns. Section 458.5 applies to returns of individuals and Section 458.6 applies to joint returns of husband and wife. In neither of these Sections is there provision for unrestricted disclosure of the contents of tax returns.

Section 458.33, which provides for inspection of tax returns by branches of the government other than Treasury Department, contains an elaborate procedure before tax returns or copies of same can be released to other governmental departments for use by same, while Section 458.34 provides for inspection of returns by the Government attorneys. Section 458.204 of the Federal Tax Regulations (Printed in full on p. 8 of this Petition) contains a specific limitation on the use of tax returns obtained by the Attorney General. This Section provides "* * * *if a return or copy is thus furnished, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use.* * * *"*

Nowhere in the record of this trial was compliance with the statutory provisions or with the Federal Tax Regulations shown.

The Federal Tax Regulations are the creatures of statute and may not enlarge the powers granted the Commissioner pursuant to the terms of the statute. Certainly in the absence of a showing by the Government at the trial of compliance with the terms of the statute or the Regulations, use of the returns in any capacity should have been forbidden. The argument of the Court of Appeals that the Government was "never asked to produce such an-

thorization at trial" (Page 143 of opinion) disregards the conceded fact that the defendant made a timely objection (27a) to the questioning from the income tax returns; thus placing upon the Government the burden of proving authorization to use these returns for cross examination.

The trial Court committed reversible error in permitting over objection the use of the Petitioner's tax returns for the purposes of cross-examination of the Appellant during the trial herein.

CONCLUSION

The petition for certiorari should be granted and this Court in the exercise of its powers should order the judgment of conviction herein reversed and the matter remanded to the appropriate Court to be dealt with accordingly.

Respectfully submitted,

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Exhibit A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 90—October Term, 1957.

(Argued October 10, 1957 Decided December 6, 1957.)

Docket No. 24624

UNITED STATES OF AMERICA,

Appellee,

—v.—

SING KEE,

Appellant.

Before:

CLARK, *Chief Judge,*
LUMBARD and MOORE, *Circuit Judges.*

Defendant was convicted in the District Court for the Southern District of New York, Richard H. Levet, *J.*, presiding, for conspiracy to violate the Immigration Laws, 18 U. S. C. A. § 371, 1425 and 1542, and 8 U. S. C. A. 1342, and on three other counts for making false statements in passport applications, in violation of 18 U. S. C. A. 1542 and 3238. There being no error in the government's cross-examining defense witness Waterman to disclose that he had pleaded the Fifth Amendment to avoid answering certain questions before the grand jury, the conviction is affirmed.

GERARD L. GOETTEL and ARTHUR B. KRAMER, Assistant United States Attorneys, Southern District of New York, New York, N. Y. (Paul W. Williams, United States Attorney, Southern District of New York, on the brief), *for appellee*.

MENAHEM STIM, New York, N. Y. (Allen S. Stim, Norman L. Kee and Curran, Mahoney, Cohn & Stim, New York, N. Y., on the brief), *for appellant*.

LUMBARD, Circuit Judge:

This appeal turns on whether it was error for the government to cross-examine defendant's witness Samuel Waterman to disclose that he had asserted the shield of the Fifth Amendment to avoid answering certain questions put to him before the grand jury. We hold that in the setting of this case the cross-examination was proper and accordingly we affirm the conviction.

Sing Kee appeals from a judgment of conviction and sentence entered on March 5, 1957, after a jury, presided over by Judge Richard H. Levet in the Southern District of New York during a ten day trial, found him guilty on four counts. Count 1 charged that the defendant, from 1949 until indictment in May 1956, conspired with certain named and unnamed persons to violate the Immigration Laws of the United States, 18 U. S. C. A. §§371, 1425 and 1542, and 8 U. S. C. A. §1342. The other three counts charged that Sing Kee on three separate occasions, in 1951 and 1952, wilfully and knowingly made false statements in applications for passports with intent to induce and secure the issuance of passports for the use of others by stating, when he knew it to be untrue, that the applicants were

the sons of named persons, 18 U. S. C. A. §§2, 1542 and 3238. A fifth count, which also charged a false statement in a passport application, was dismissed at the close of the government's case. The defendant was sentenced to 2½ years and fined $1,500 on each count, the prison sentences to run concurrently.

The government's proof to sustain the conviction was abundant and convincing. In summary, the evidence disclosed that Sing Kee, while operating the China Overseas Travel Service at 11 Mott Street in New York's Chinatown, was also engaged in preparing and processing passport applications for Chinese attempting to gain entry into this country by posing as sons of Chinese-American citizens. The Chinese immigration quota of 100 each year, 8 U. S. C. A. 1151, virtually limited immigration from China to those who were derivative citizens by virtue of the American citizenship of one of their parents.

The scheme was, in general, as follows: Chinese American citizens or alleged citizens, married in China while on visits to that country or before original entry into the United States, would make fictitious reports to the immigration authorities of sons born to them in China or would fail to report the deaths of sons who had resided in China. Immigration records would accordingly list a citizen son not actually in existence. The "slot" thus created would be sold by the "parent" for prices usually ranging from $1,000 to $1,800 to a Chinese in the United States who desired to bring over a youth comparable in age to the fictitious son. Sing Kee would prepare or would have prepared the necessary passport applications and supporting affidavits and would produce doctoring books called "chalzoons," from which the applicant, in Hong Kong, could obtain the necessary basic facts concerning the family of which he claimed to be a son. This information was necessary to substantiate the claim of derivative citizenship

and thus enable the applicant to come to the United States as a citizen. Sing Kee usually received for his services from $400 to $600, part of which he paid to attorneys and others. In six separate cases there was evidence that Sing Kee was well aware that the "sons" were not sons. In one case it was testified that Sing Kee himself arranged to buy a slot from a father.

Several persons were involved, wittingly or unwittingly, in the transactions giving rise to the prosecution. A physician and a serologist, Doctors Liu and Sussman, determined the compatability of the blood of the alleged sons with that of their supposed parents so as to weed out the incompatibles. A brother of the defendant, Albert Kee, a friend, Wilbur Chung, and a notary public, Louis Treglia, all performed services incidental to the conspiracy. In addition, one attorney prepared affidavits, usually for $25, and another followed the course of these matters through the State Department for fees of from $25 to $75, and both attorneys transmitted the affidavits and passport applications to the appropriate authorities.

In those cases where the State Department refused to issue passports to the spurious sons, Sing Kee referred the "parents" to Samuel Waterman, an attorney who had offices at 111 Broadway in lower Manhattan. Waterman filed suits in the federal courts under §503, Nationality Act of 1940, 54 Stat. 1171, on behalf of the "parents" for declaratory judgments that their "sons" were citizens. Between mid-1951 and December 24, 1952, the date after which such suits could no longer be brought by reason of the provisions of the Immigration and Nationality Act of 1952, 66 Stat. 281 and 8 U. S. C. A. §1503, 66 Stat. 273, Waterman filed between 50 and 75 such cases referred to him by Sing Kee. Among these were suits in which Hom Wing Gim, Moy Mun Sing and Chin Kung Chee were plaintiffs. Hom Wing Gim and Moy Mun Sing testified that they had sold

"sons" and thereafter had made arrangements with Sing Kee in such wise that the jury could well conclude that Sing Kee knew that the passport applications which he caused to be filed in Hong Kong and the civil complaints were fraudulent and false. In the case of Chin Kung Chee the jury could well conclude that Sing Kee knew the complaint to be spurious. On cross-examination all three "fathers" were asked whether they had met and talked with their attorney Waterman. Each of them testified that they had not talked with Waterman but that they had gone to his office, had signed papers, and had dealt with persons other than Waterman.

The Defense

Sing Kee testified on his own behalf and conceded that he had assisted in bringing in many sons and attempted to bring in others. He denied knowledge of the fraudulent nature of any of the claims and that he had prepared any halfgoons. He claimed that he had received only small sums for expenses, although he admitted that he had netted $23,000 in 1951 and 1952 after expenses.

Apart from character witnesses, Waterman was the only other defense witness. He testified that the information upon which he had brought the suits involving derivative citizenship claims of Chinese was given him by the fathers, that he had no knowledge of any fraudulent claim and that he had no reason to believe that Sing Kee had any such knowledge.

Waterman swore that he had met and talked with Hom Wing Gim, Moy Mun Sing and Chin Kung Chee prior to filing complaints on their behalf.[1] In this respect his testimony conflicted with theirs as they had denied meeting him.

[1] In his testimony before the grand jury Waterman was not sure whether he had discussed their cases with Hom Wing Gim, Moy Mun

Waterman testified on cross-examination that the fees he received through Sing Kee were deposited in his checking account in the Trust Company of North America at 115 Broadway and that he kept records of these fees on his check stubs and in the individual case files. The government was then permitted to bring out, over defense objection, that in his testimony before the grand jury Waterman had claimed his Fifth Amendment privilege not to answer questions regarding his fees and records on the ground that the answers might tend to incriminate him.[2]

Sing and Chin Kung Chee. At the trial he testified that he had refreshed his recollection after his grand jury appearance and he remembered going over the details with them before drawing up the complaints.

[2] The following appears in the trial minutes:

"Q. Mr. Waterman, were you asked the following questions before the Grand Jury * * *

'Q. When you received these various payments, what did you do with them?'

And the next question was * * *

* * * * *

Q. And were you asked before the Grand Jury as follows, the following questions:

'Q. Where would you deposit them? What Bank?'

Were you asked those questions? A. I assume that I was, if you have it there, in the minutes.

Q. Were you also asked this question:

'Q. What sort of books and records do you keep?'

A. I have no recollection whether I was asked that. If you have it there, I will concede that I was asked it.

Q. Do you recall the answers you gave to those questions? A. I do not at this time.

* * * * *

Q. 'Where would you deposit them? Q. What bank?', and then, 'Q. What sort of books and records do you keep?' When you were asked those questions, did you reply that any answer might incriminate you?

* * * * *

Q. Did you claim your rights under the Fifth Amendment before the Grand Jury in answer to those questions?

* * * * *

A. If it is stated there that I did, I did.

* * * * *

(138)

We hold that in the setting of this case, and considering especially the entire examination of Waterman and the weight and significance of his testimony, the relevance of Waterman's grand jury claim of privilege outweighed the danger that the jury would draw from it any impermissible inference regarding Sing Kee's guilt of the charges for which he was on trial.

Waterman testified to a relatively minor facet of the case, namely, whether he had or had not talked with the "fathers" before filing suit for them. If on this point the jury disbelieved the three "fathers" that, of course, would cast suspicion on their credibility as to the more important testimony concerning Sing Kee's guilty knowledge that the "sons" were spurious. Waterman's testimony did not go to the heart of the case; it merely contradicted three witnesses on a minor matter which at best could only raise a question as to their credibility.

Defendant asks us to reverse the convictions on the authority of *Gruenwald* v. *United States*, 353 U. S. 391 (1957). We do not agree that *Gruenwald* requires reversal under the circumstances of this case. *Gruenwald* requires

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Q. I want a yes or no answer, whether to the best of your recollection you claimed the Fifth Amendment when you were asked those questions.

* * * * *

A. I do not recall whether I did or not.

Q. Do you recall making these answers to these questions:

"Q. What bank? A. I refuse to answer, Mr. Goettel.

"Q. On what grounds? A. On the grounds that it may incriminate me.'

* * * * * *

Q. Do you recall making those answers at that time? A. I don't recall it, but if it is down in the minutes there, then I made it.

Q. Do you recall making this answer to the question:

"Q. What sort of books and records do you keep? A. I refuse to answer on the grounds that it may incriminate me. A. I don't recall it but the same thing, if it is down there, then I made it."

an *ad hoc* determination by the trial judge, wherein he must balance two competing considerations in the light of all the circumstances of the case—the extent to which the prior claim of privilege affects the credibility of the witness and the possible impermissible impact on the jury occasioned by a showing of the prior plea. The trial judge did not abuse his discretion by permitting the cross-examination of Waterman.

As in *Gruenwald*, the answers given by Waterman on cross-examination at trial were not necessarily inconsistent with the claim of the privilege before the grand jury. Although by themselves his answers to the specific questions did not tend to connect him with Sing Kee, neither were they exculpatory. Indeed, exculpatory testimony is not necessarily inconsistent with a prior plea of the Fifth Amendment. See *United States* v. *Tomaiolo*, No. 24509, 2 Cir., filed November 21, 1957.

Here, however, there was an inconsistency between Waterman's answers before the grand jury and the inference raised by his testimony at trial regarding his conduct before the grand jury. Defense counsel questioned Waterman on direct examination about his appearance before the grand jury, as follows:

> "Q. By the way, Mr. Waterman, were you a witness before the Grand Jury? A. I was, sir.
>
> Q. And did you give the Grand Jury the same testimony that you are giving us here; substantially? A. Well, if I was asked the same questions.
>
> Q. Was the testimony true that you gave to the Grand Jury? A. As far as I know, yes, sir.
>
> Q. What I mean is, was it true, as far as you knew? A. That's right.
>
> Q. And you had your files with you? A. I think I did."

The answers given by the witness were factually accurate, but they were capable of a much broader interpretation. The defendant would have had the jury believe that Waterman had been a cooperative and candid witness before the grand jury, thereby bolstering his credibility. Having brought the conduct of the witness before the grand jury into issue, the defendant cannot now complain that the government was permitted to develop all that happened so as to rebut an inference which was contrary to fact. The rule enunciated in *Grunewald* was intended to implement the constitutional guarantee against self-incrimination; it was not intended to permit a defendant to draw out part of the facts from a witness while foreclosing the government on cross-examination from developing all the facts so that the partial account is not misleading. Cf. *Walder* v. *United States*, 347 U. S. 62 (1954).

But to hold that the plea of the Fifth Amendment was inconsistent with the inference raised by the witness' testimony on direct examination and hence was material in impeaching his credibility is but half the answer. We must go on to consider the possible impermissible impact on the jury.

Here the crucial question is whether the jury would be likely to equate Waterman's refusal to answer these few questions before the grand jury with the defendant's guilt. If the danger that the jury's knowledge of the prior plea might have been improperly carried over so as to affect its belief in the defendant's innocence or guilt outweighed the effect on credibility, then evidence of the prior plea should have been excluded. See *Travis* v. *United States*, 247 F. 2d 130 (10 Cir. 1957).

We do not believe that, in the circumstances of the case, the dangers of an impermissible impact on the jury were such as to override the consideration justifying admission. Unlike *Grunewald*, the witness in this case was not a de-

fendant. Since Waterman did not file the civil actions until the passport applications had been administratively denied, his contact with the defendant as to each transaction occurred subsequent to the filing of the fraudulent application. Because his involvement in Sing Kee's activities was merely peripheral, Waterman's testimony was directed to and conflicted with prosecution testimony only regarding his procedure in filing civil actions. The danger that the jury would believe Sing Kee to be guilty because of his association with Waterman, who had pleaded the Fifth Amendment, was minimal. As it was, the trial judge immediately instructed the jury that the raising of this issue was "not in any way to reflect upon the defendant."[3] There was not the kind of intimate relationship between Waterman and Sing Kee which might cause the jury to consider the actions of one the actions of the other. See *United States* v. *Tomaiolo*, *supra*, where the witness who pleaded the Fifth Amendment was the defendant's brother.

The thrust of the questions which Waterman had previously refused to answer was even more remote from the heart of the case than Waterman's contradictions of the testimony of the three prosecution witnesses. Unlike *United States* v. *Tomaiolo*, *supra*, the questions were not so intimately related to the details of the crime that a jury, coupling the answers at trial with the prior plea, would be likely improperly to infer facts directly bearing on defendant's participation in the crimes charged. Even if the jury had equated Waterman's prior plea with his guilt of a criminal act, it does not follow that it would go on to infer that the criminal acts involved Sing Kee. Much evi-

[3] The defendant requested no further charge to the jury on this point and none was given. Under these circumstances it was not required that the judge instruct the jury again in the charge, but it seems to us that such a charge would have been desirable to make sure that the jury clearly understood the limited purpose of the fact that a witness had previously pleaded the Fifth Amendment to certain questions.

dence was introduced to establish what Sing Kee was paid and the moneys he disbursed in handling passport matters and most of this was not disputed.

The questions which Waterman refused to answer related to his handling of his personal funds after receipt from the defendant, an inquiry without direct bearing on Sing Kee's knowledge of the spurious nature of the claims, and Waterman had freely testified to his relationship with Sing Kee. The possible reasons for Waterman refusing to divulge facts regarding his handling of his personal finances were so varied[4] that, in our opinion, there was not a substantial likelihood, under all the circumstances here attendant, that the jury would indulge in speculations which would result in their equating the witness' refusal to testify with the defendant's guilt.

Sing Kee complains of two other matters as constituting error, both of which we find without merit. On his cross-examination he was questioned from tax returns submitted by him for the years 1951 and 1952, the returns being used to refresh his recollection. At that time appellant's counsel objected to the use of the returns on the ground that they could be used only in an income tax case. This objection was properly overruled. *Lewy* v. *United States*, 29 F. 2d 462 (7 Cir. 1928), *cert. den.* 279 U. S. 850; *United States* v. *Rollnick*, 91 F. 2d 911, 918 (2 Cir. 1937). It is now urged that the government failed to show that the returns had been obtained in accordance with 26 U. S. C. A. §6103(a) and 26 CFR 601.702 (1956), 26 CFR 458.204 (1939). The government was never asked to produce such authorization at trial, but the government asserts that it was prepared

[4] If the jury were improperly to draw any inferences of guilt from Waterman's plea of privilege it seems more likely that they would infer that Waterman feared investigation with respect to income taxes, failure to report payments of money to others, or the like, all matters quite foreign to the charges against Sing Kee and Sing Kee's possible guilt.

to do so if the point had been raised. When the trial judge correctly overrules a specific objection, it cannot be argued on appeal that the evidence, or, as here, the use of returns to refresh recollection, was improper for a different reason. *Norwood* v. *Great American Indemnity Co.*, 146 F. 2d 797 (3 Cir. 1944). Such an afterthought deserves no attention, especially where it is apparent that the government could have satisfied the court as to the ground now belatedly urged.

Appellant also charges that there was a variance between the indictment and proof, since the evidence disclosed six separate conspiracies rather than one. Even if we assume that such a variance exists, it is not fatal to the conviction as it did not affect the substantial rights of the accused. *Berger* v. *United States*, 295 U. S. 78, 82 (1935). This is not a situation where a defendant involved in one conspiracy has been convicted in a mass trial encompassing numerous other conspiracies involving matters and persons entirely unknown to him; nor are there any questions relating to the admission of statements by alleged co-conspirators as in *Kotteakos* v. *United States*, 328 U. S. 750 (1946). Here Sing Kee was the only defendant; he was the key figure in all that transpired. Since the principal government witnesses are named in the conspiracy count and since four of the transactions served as bases for the other counts, it is evident that the defense was not taken by surprise by the evidence at trial. Nor is there any danger of another prosecution for the same offense. See *Berger* v. *United States*, *supra*. Thus there is no merit to Sing Kee's claim of error on the ground that the proof showed numerous conspiracies rather than one. *Monroe* v. *United States*, 234 F. 2d 49 (D. C. Cir. 1956); *Quirk* v. *United States*, 161 F. 2d 138 (8 Cir. 1947).

The judgment is affirmed.

Exhibit B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INDICTMENT

C 150-98

14486

—o—

[SAME TITLE]

—o—

The Grand Jury charges:

1. Beginning in and about 1949 and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, Sing Kee, the defendant herein, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree with Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Wing Gim (also known as Jew Ing Gim), Ng Yee Chor (also known as Ng Quock Keung), Ng Jock Neuy (also known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (also known as Sum Yuen Quay), and George Wong, named as co-conspirators but not defendants herein, and with divers other persons to the Grand Jurors unknown, to defraud the United States and to commit offenses against the United States, it wit, to violate Title 18, Sections 1425 and 1542 and Title 8, Section 1324 of the United States Code.

2. It was part of said conspiracy that the defendant and other co-conspirators would wilfully and knowingly

encourage and induce the entry into the United States of aliens not lawfully entitled to enter or reside under the laws relating to the immigration of aliens.

3. It was further part of said conspiracy that the defendant and other co-conspirators would make false statements and cause false statements to be made in applications for passports in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai, with intent to induce and secure the issuance of passports under the authority of the United States for the use of others, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations).

4. It was further part of said conspiracy that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of said applications in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai.

5. It was further part of said conspiracy that the defendant and other co-conspirators would submit and file, and cause to be submitted and filed, the aforesaid applications with the Consul of the United States of America in and for the Consular District of Hong Kong in the British Crown Colony of Hong Kong.

6. It was further part of said conspiracy that the defendant and the other co-conspirators would knowingly attempt to procure and obtain documentary evidence of citizenship for other persons not entitled thereto, by causing civil actions to be instituted and filed under Section 503 of the Nationality Act of 1940, in the names of Jew Sun

Ai, Moy Hing Mee, Chin Xin Oon and Chin Seu Toon, to have them declared citizens of the United States.

OVERT ACTS

The Grand Jury further charges that in furtherance of the said conspiracy and to effect the objects thereof the defendant and other co-conspirators performed the following overt acts:

1. In or about 1949, in the Southern District of New York, the defendant Sing Kee had a conversation with Hom Wing Gim at 11 Mott Street, New York, N. Y.

2. In or about December, 1949, in the Southern District of New York, the defendant Sing Kee was paid $400. by Eng Gim Ting at 11 Mott Street, New York, N. Y.

3. On or about December 21, 1949, in the Southern District of New York, the defendant Sing Kee handed Hom Wing Gim an unsigned affidavit at 11 Mott Street, New York, N. Y.

4. In or about March, 1950, in the Southern District of New York, the defendant Sing Kee had a conversation with Ng Mong On at 11 Mott Street, New York, N. Y.

5. On or about the 24th day of March, 1950, in the Southern District of New York, the defendant Sing Kee handed Ng Mong On an unsigned affidavit at 11 Mott Street, New York, N. Y.

6. In or about April, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Chin Kung Chee at 11 Mott Street, New York, N. Y.

7. On or about the 5th day of May, 1952, in the Southern District of New York, the defendant Sing Kee handed Chin Kung Chee an unsigned affidavit at 11 Mott Street, New York, N. Y.

8. In or about September, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Moy Mun Sing at 11 Mott Street, New York, N. Y.

9. On or about the 6th day of October, 1952, in the Southern District of New York, the defendant Sing Kee handed Moy Mun Sing an unsigned affidavit at 11 Mott Street, New York, N. Y.

10. In or about December, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with George Wong at 11 Mott Street, New York, N. Y. (Title 18, Section 371, United States Code.)

COUNT TWO

The Grand Jury further charges:

On or about January 18, 1951, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Ng Quock Keung, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regu-

lations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Ng Mong On, when in truth and in fact, as the defendant then well knew, the passport applicant was not the son of Ng Mong On. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT THREE

The Grand Jury further charges:

On or about June 18, 195', at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Jew Sun Ai, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Jew Ing Gim, when in truth and in fact, as the defendant then well knew, the passport applicant was not the son of Jew Ing Gim. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT FOUR

The Grand Jury further charges:

On or about October 28, 1952, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Moy Hing Mee, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of pasports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Moy Mun Sing, when in truth and in fact, as the defendant well knew, the passport applicant was not the son of Moy Mun Sing. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT FIVE

The Grand Jury further charges:

On or about December 10, 1952, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Sum Nin Oon, with intent to induce and secure the issuance of the passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of

passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant and his father were members of the Sum family, when in truth and in fact, as the defendant then well knew, the passport applicant and his father were not members of the Sum family. (Title 18, Sections 2, 1542 and 3238, United States Code.)

.....
Foreman

.....
PAUL W. WILLIAMS
United States Attorney

No. 699

In the Supreme Court of the United States

OCTOBER TERM, 1957

SING KEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statement	2
Argument	9
Conclusion	13

CITATIONS

Cases:	
Granewald v. *United States*, 353 U. S. 391	11
Levy v. *United States*, 29 F. 2d 462, certiorari denied, 279 U. S. 850	12
United States v. *Rollnick*, 91 F. 2d 911	12
Walder v. *United States*, 347 U. S. 62	10, 11
Statutes and Regulations:	
Immigration and Nationality Act of 1952, 66 Stat. 163, 281	4
Sec. 274 (8 U. S. C. 1324)	2
Sec. 360 (8 U. S. C. 1503)	4
Nationality Act of 1940, Sec. 503, 54 Stat. 1171	4
18 U. S. C.:	
371	2
1425	2
1542	2
Federal Tax Regulation (1954), Sec. 458.204	12

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OPINION BELOW

The opinion of the Court of Appeals (Pet. 53–64, C. A. 84a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 6, 1957 (C. A. 96a). The petition for a writ of certiorari was filed on January 2, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the trial court committed reversible error in permitting cross-examination of a defense witness which showed that he had invoked the Fifth

Amendment at grand jury proceedings when, on direct examination, the defense had questioned the witness as to the scope and truthfulness of his testimony at those proceedings.

2. Whether the government was required to show that copies of petitioner's income tax returns, used in cross-examination to refresh his recollection, were obtained in compliance with federal regulations when petitioner raised no question as to their proper procurement.

STATEMENT

A five-count indictment returned in the United States District Court for the Southern District of New York charged petitioner with crimes incident to procuring the illegal entry of Chinese aliens into this country. Count 1 charged a conspiracy with others under 18 U. S. C. 371, from 1949 to 1956, to induce the entry of ineligible aliens into this country, to procure documentary evidence of citizenship for them, and to make false statements in connection with passports, in violation of 8 U. S. C. 1324, and 18 U. S. C. 1425 and 1542. The remaining four counts charged petitioner with substantive violations of 18 U. S. C. 1542 by making false statements in applications for passports on four separate occasions in 1951 and 1952 (Pet. 65). After a jury trial, petitioner was found guilty on the first four counts (R. 1033).[1] He was sentenced to 2½ years imprisonment and a fine of $1,500 on each count, the prison sentences to run concurrently (R. 1049–1050).

[1] The fifth count was dismissed at the close of the government's evidence (see Docket B).

1. This case arose out of the illicit traffic of Chinese aliens claiming derivative citizenship as sons of American citizens. Chinese-American citizens or alleged citizens, married in China while on visits to that country or before original entry into the United States, would make fictitious reports to the immigration authorities of sons born to them in China or would fail to report the deaths of sons who had resided in China. Immigration records would accordingly list a citizen son—a "paper son"—not actually in existence. The "slot" thus created would be sold by the "parent" to a Chinese in the United States who desired to bring over a youth comparable in age to the fictitious son. This "son" needed to know basic facts about the history of the family of which he claimed to be an offspring. In addition, necessary passports and supporting affidavits had to be secured.

These needed services, the government's evidence showed, were performed by petitioner, who operated a travel service (see *infra*, pp. 4–6). He prepared coaching books or family histories called "halgoons". He received fees ranging from $400 to $600, part of which he paid to others. He had the services of a notary, and was assisted in the preparation of passport affidavits by an attorney whom he usually paid $25 (R. 380–385). Another attorney followed the passport applications through the State Department for fees of from $25 to $100 and both attorneys helped transmit the affidavits and applications to appropriate authorities (R. 355–377, 387). A physician and a serologist took blood tests to establish whether any alleged son had a blood type incompatible with that

of an alleged father (R. 482). If the applications were denied, petitioner referred the "parents" to an attorney, Samuel Waterman, who would file suits in the federal courts under Section 503 of the Nationality Act of 1940, 54 Stat. 1171, on behalf of the "parents" for declaratory judgments that their "sons" were citizens (*infra*, pp. 5, 6). Between mid-1951 and December 24, 1952, the date after which such suits could no longer be brought by reason of the provisions of the Immigration and Nationality Act of 1952, 66 Stat. 281, and 8 U. S. C. 1503, 66 Stat. 273, Waterman filed between 50 and 75 such cases referred to him by petitioner (R. 652–654).

2. Specifically, with respect to the passport frauds charged in the indictment, the government's evidence showed, *inter alia:*

A Chinese restaurant owner, desiring to sponsor the admission of two alien boys into this country, purchased slots of two fictitious persons, Ng Quock Keung and Jew Sun Ai, from two "fathers" (R. 28, 166, 182, 307). The "fathers" supplied petitioner with family histories (R. 39, 311) and the sponsor furnished pictures of the boys he wanted admitted (R. 170, 186). Petitioner prepared a "halgoon" for each case, giving copies to both the sponsor and the "fathers" (R. 39, 173, 187, 316). He had prepared and had notarized (without the affiants being present (R. 56–57, 314)) affidavits which were sent to Hong Kong, in one case to the applicant, the other to the U. S. Consulate (R. 173, 385–387). He was paid $400 by the sponsor (R. 174). The impersonator of Ng Quock Keung was admitted to this country (R. 62). Petitioner

assisted the boy and his "paper father" to obtain certificates of citizenship under their assumed names (R. 78–80). The application of Jew Sun Ai for a passport was denied (R. 200). Petitioner sent his "father," Hom Ing Gim (who had entered this country as Jew Ing Gim), to the office of attorney Waterman who filed a civil complaint for a declaratory judgment that Jew Sun Ai was a citizen (R. 200, 320).

Another witness, Moy Mun Sing, testified that, when he sought petitioner's assistance in bringing his true son to this country, petitioner offered him $1,500 for an extra "slot" which the father had created by reporting the birth of a daughter as a son (R. 565, 570, 572). Moy Mun Sing signed, along with the affidavit for his son, another affidavit bearing the picture of a boy whom he did not know, identified as the second son (R. 571, 574). Both the true and false affidavits were notarized at a later time and sent to the U. S. Consulate through an attorney (R. 387). When passports were denied, petitioner sent Moy Mun Sing to Waterman's office. The witness signed a complaint which was not read to him and which, in reality, was a claim in relation to the false "slot" and not to his true son (R. 577).

Chin Kung Chee, who entered this country under the "paper name" of Sum Yuen Quay, went to petitioner for help in getting his true son, whose real name was Chin Nin Oon, into the country under a slot for Sum Nin Oon (R. 518–521). Petitioner had affidavits prepared which Chin signed and which were notarized later and submitted to the Consulate (R.

530). Chin paid petitioner $200 and was to pay him $300 more when the boy arrived (R. 531). On his third visit to petitioner, Chin Kung Chee told petitioner of the assumed family name (R. 523). When a passport was denied, petitioner sent Chin Kung Chee to Waterman's office (R. 532–533). A complaint was filed under the assumed names (R. 537).

The "fathers", Hom Ing Gim (alias Jew Ing Gim), Moy Mun Sing, and Chin Kung Chee (alias Sum Yuen Quay), identified their handwriting on the complaints for declaratory judgments introduced at the trial (R. 319, 537, 577). Each said he had been taken to a lawyer's office by petitioner's assistant and had signed papers he could not read and which were not read to him (R 320–322, 577–578, 533, 536–537, 556). Hom Ing Gim said there was a white man present but he did not talk to him (R. 322); Moy Mun Sing said he did not know Waterman (R. 578); and Chin Kung Chee said that he did not retain Waterman but that when he was taken to the lawyer's office there were two white men present—that they did not talk to him (R. 536, 538).[2]

3. Petitioner took the stand in his own defense (R. 706 *et seq.*). He conceded that he had assisted in bringing in many sons and had attempted to bring in others. He denied knowledge of the fraudulent nature of any of the claims and denied that he had prepared any "halgoons" (R. 718 *et seq.*), or tried to buy a "slot" (R. 808). He claimed that he had re-

[2] The government's evidence also showed petitioner's involvement with the users of "slots" of Chin Seu Loon and Chin Sung Hong, both in reality deceased (R. 407–466, 468–499).

ceived only small sums for expenses, although he admitted that he had netted $23,000 in 1951 and 1952 after expenses (R. 861–878).

Apart from character witnesses, attorney Waterman was the only other defense witness (R. 590). He testified that the information upon which he had brought suits claiming citizenship was given him by the "fathers," that he had no knowledge of any fraudulent claim, and no reason to believe that petitioner had any such knowledge. In this connection he testified that he had met and talked with Hom Ing Gim, Moy Mun Sing, and Chin Kung Chee prior to filing complaints on behalf of their "sons" (R. 595, 620, 628). With regard to fees, he testified that "my record shows" Jew Ing Gim paid $150 through petitioner (R. 602). He testified that the other "fathers" paid nothing (R. 627, 634).

As part of Waterman's direct testimony, defense counsel asked and received the following questions and answers (R. 618):

> Q. By the way, Mr. Waterman, were you a witness before the Grand Jury?
>
> A. I was, sir.
>
> Q. And did you give the Grand Jury the same testimony that you are giving us here, substantially?
>
> A. Well, if I was asked the same questions.
>
> Q. Was the testimony true that you gave to the Grand Jury?
>
> A. As far as I know, yes, sir.
>
> Q. What I mean is, was it true, as far as you knew?
>
> A. That's right.

Q. And you had your files with you?
A. I think I did.

On cross-examination, Waterman turned over to government counsel "all" the papers with reference to Jew Ing Gim. He said that he had no financial records with him at trial but that he had an independent recollection of the fee paid (R. 640).

After he had reiterated his belief that "everything I said here today is consistent with what I said before the Grand Jury" (R. 644), the cross-examination revolved largely around what he had said before the grand jury. Although defense counsel objected initially to the manner in which government counsel was "skipping" "out of context" in reading the grand jury minutes (R. 645), and several times raised a question as to whether specific testimony was inconsistent (R. 668, 681), he made no serious objection while Waterman was questioned about his grand jury testimony with regard to who sent a certain client to him (R. 645), who accompanied clients to his office (R. 656), whether his records revealed that he saw Chin Kung Chee personally (R. 660), whether he saw Moy Mun Sing and Jew Ing Gim personally (R. 681, 682),[3] whether in fact he was always present when clients called (R. 667), and how he was paid in one case, *i. e.*, by cash or check (R. 691).

[3] In the grand jury proceedings, Waterman testified that his records would not show whether he talked to Chin personally; he was not sure that he had talked with either of three of the "fathers" personally. At the trial, he testified that he had refreshed his recollection after his grand jury appearances and remembered going over the details with them before filing the cases (see R. 684).

Waterman then testified on cross-examination that petitioner in most of these cases collected and forwarded the fees from the clients (R. 692). When asked what he did with the money, he answered that he put it in a checking account, naming the bank, and that he kept records by writing down the receipts in check book stubs and in the individual case files (R. 692–693). The court then sustained an objection to government counsel's inquiry as to whether Waterman considered these latter answers incriminating (R. 693). After a bench conference, the court permitted government counsel to ask Waterman if he had been asked during the grand jury proceedings what he did with his payments, in what bank did he deposit them and what sort of books and records he kept (R. 696–697). When Waterman said he could not remember how he answered these questions at that time (R. 697), the court permitted government counsel to bring out, over objection, that Waterman had invoked his Fifth Amendment privilege not to answer them (R. 699–700). The court at the time instructed the jury that the raising of this issue was not in any way to reflect upon the defendant (R. 701).

ARGUMENT

1. Petitioner argues, as he did below, that the trial court committed prejudicial error in permitting the government to bring out on cross-examination of the witness Waterman testimony that he had invoked the Fifth Amendment at a grand jury hearing with respect to matters as to which he testified at the trial. However, as the court below pointed out, it was the

defense that first introduced on direct examination the matter of testimony given at the grand jury proceedings. Since the defendant had opened the door by introducing the subject of Waterman's grand jury testimony, the government had the right to develop more fully what had in fact taken place before the grand jury. Thus, there could have been, and indeed there was, no serious objection to cross-examination of this witness as to the manner in which he consulted with clients (see the Statement, *supra*). It was equally proper to ask what he had said before the grand jury about fees paid by the clients, particularly since Waterman on direct had testified as to his records concerning some fees. And it was part of that whole picture to show that before the grand jury Waterman had claimed the privilege with respect to his records regarding fees.

Moreover, as the court below pointed out, the impression which Waterman's testimony on direct tended to convey was that he had answered all questions asked of him and that his grand jury testimony had been completely consistent with his direct. But on direct examination petitioner had testified as to what his records showed, and before the grand jury petitioner had refused to answer questions about his records. Petitioner could not create one impression by his direct testimony at the trial and then prevent the government from showing that such direct testimony was not true. This is the rationale of this Court's decision in *Walder* v. *United States*, 347 U. S. 62, where it was held that a defendant's assertion that he had never dealt in narcotics opened the door, solely

for the purpose of attacking his credibility, to evidence of heroin unlawfully seized and suppressed in an earlier proceeding. This case does not present the question whether under *Grunewald* v. *United States*, 353 U. S. 391, the government could, in the first instance, have brought up the subject of the claim of privilege before the grand jury by a witness. But even if it be assumed, *arguendo*, that it could not have done so, just as the government in *Walder* could not have initially used the suppressed evidence, that does not go to the issue of the government's right to pursue a line of examination opened up by the defense, to counteract the false impression elicited by the defense on direct examination of the witness.

As the Court of Appeals noted, there was, in this case, no real possibility that the showing of the claim of privilege would be of such danger to the defense as to override the considerations justifying the admission of the testimony. Unlike *Grunewald*, and unlike *Walder*, *supra*, the witness Waterman was not a defendant. Moreover, Waterman did not enter the picture until after petitioner had filed the fraudulent passport applications. Thus, there was little danger that the jury could infer, from this relationship, that petitioner was guilty because Waterman had invoked the Fifth Amendment, and the judge immediately instructed that the raising of the issue was "not in any way to reflect upon the defendant" (R. 701). The purpose of Waterman's testimony at the trial was to show that he had consulted with the "fathers" before he filed the declaratory judgment suits. This did tend to contradict the testimony of the government

witnesses that they had been taken to a lawyer's office but did not talk to the white men present. But it did not go to the heart of the case or of the witnesses' testimony, and was not of such character that the jury could not have found petitioner guilty, even if Waterman's testimony was credited.

2. There is no merit to petitioner's argument, raised for the first time on appeal below, that the government improperly used for purpose of cross-examination tax returns illegally obtained in violation of applicable regulations. Copies of returns, submitted by petitioner for the years 1951 and 1952, were used only to refresh petitioner's recollection after he stated that to recall his income he would have to refer to them (R. 864). Petitioner's sole objection at that time was that they could only be used in an income tax prosecution (R. 867), an objection properly overruled. *Levy* v. *United States*, 29 F. 2d 462 (C. A. 7), certiorari denied, 279 U. S. 850; *United States* v. *Rollnick*, 91 F. 2d 911, 918 (C. A. 2). Since the United States Attorney manifestly had the returns, it is reasonable to assume that there had been a proper written request therefor as required by Federal Tax Regulation (1954), Sec. 458.204. The government assured the court below that, had the question of proper authorization been raised, it was prepared to show that the returns had been procured in a proper manner.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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